SENATE.

TUESDAY, *February 11, 1908.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Journal of yesterday's proceedings was read and approved.

FINDINGS OF THE COURT OF CLAIMS.

The VICE-PRESIDENT laid before the Senate communications from the assistant clerk of the Court of Claims, transmitting certified copies of the findings of fact filed by the court in the following causes:

In the cause of the trustees of the Presbyterian Church of Clarksburg, W. Va., *v.* United States;

In the cause of C. A. Jarred, administrator of the estate of Leroy Noble, deceased, *v.* United States;

In the cause of the trustees of the Evangelical Lutheran Church of Burkittsville, Md., *v.* United States;

In the cause of the Tonoloway Baptist Church, of Fulton County, Pa., *v.* United States;

In the cause of the trustees of the Methodist Episcopal Church of Philippi, W. Va., *v.* United States;

In the cause of the trustees of the First Baptist Church of Danville, Ky., *v.* United States; and

In the cause of the Corporation of the Methodist Episcopal Church of Hancock, Md., *v.* United States.

The foregoing findings were, with the accompanying papers, referred to the Committee on Claims and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 14766) making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1908, and for prior years, and for other purposes; further insists upon its disagreement to the amendments of the Senate numbered 5, 11, and 26; agrees to the further conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. TAWNEY, Mr. VREELAND, and Mr. LIVINGSTON managers at the conference on the part of the House.

The message also announced that the House had passed a bill (H. R. 14382) to establish a United States court at Jackson, in the eastern district of Kentucky, in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the Vice-President:

S. 485. An act to create a new division of the northern judicial district of Texas and to provide for terms of court at Amarillo, Tex., and for a clerk of said court, and for other purposes;

S. 1256. An act for the relief of Pope & Talbot, of San Francisco, Cal.;

S. 2929. An act to authorize the Idaho and Washington Northern Railroad to construct a bridge across the Pend d'Oreille River, in the State of Washington; and

S. 4048. An act granting an increase of pension to certain soldiers and sailors of the civil war and certain widows of such soldiers and sailors.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented memorials of the Emmans Male Choir, of Fort Wayne, Ind.; of the German Library Association, of Wilmington, Del.; of the German Club of Norfolk, Va.; of Eintracht Lodge, No. 26, Order of Sons of Herman, of Beemer, Nebr., and of Robert Blum Lodge, No. 46, Independent Order of Odd Fellows, of Hermann, Mo., remonstrating against the enactment of legislation to regulate the interstate transportation of intoxicating liquors, which were referred to the Committee on the Judiciary.

He also presented a petition of the Chamber of Commerce of Olympia, Wash., praying that an appropriation be made for the erection of a public building at that city, which was referred to the Committee on Public Buildings and Grounds.

He also presented a petition of the Retail Hardware Association of the State of Minnesota, praying for the enactment of legislation providing for a revision of the present tariff law relative to the products of iron and steel, which was referred to the Committee on Finance.

Mr. PLATT presented memorials of sundry citizens of New York City, N. Y., remonstrating against the adoption of a certain amendment to the present copyright law relating to photographic reproductions, which were referred to the Committee on Patents.

He also presented a memorial of William G. Mitchell Post, No. 559, Department of New York, Grand Army of the Republic, of New York City, N. Y., remonstrating against the enactment of legislation to abolish certain pension agencies in the United States, which was referred to the Committee on Pensions.

He also presented a memorial of Local Branch No. 62, Glass Bottle Blowers' Association, of Poughkeepsie, N. Y., remonstrating against the enactment of legislation to prohibit the interstate transportation of intoxicating liquors in prohibition districts, which was referred to the Committee on the Judiciary.

Mr. GALLINGER presented petitions of the congregation of the Methodist Episcopal Church of Fitzwilliam, of the Woman's Christian Temperance Union of Fitzwilliam, in the State of New Hampshire; of the Woman's Christian Temperance Union of Bergen County, N. J., and of Milton M. Thorne, of Washington, D. C., praying for the enactment of legislation to prohibit the manufacture and sale of intoxicating liquors in the District of Columbia, which were referred to the Committee on the District of Columbia.

He also presented the memorial of Washington Topham, of Washington, D. C., remonstrating against the passage of the so-called "Dolliver bill" providing for the direction and control of public education in the District of Columbia, which was ordered to lie on the table.

Mr. PERKINS presented a petition of sundry citizens of Vallejo, Cal., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors, which was referred to the Committee on the Judiciary.

He also presented a memorial of the Woman's Christian Temperance Union of Berkeley, Cal., remonstrating against the enactment of legislation providing for the reestablishment of the Army canteen, which was referred to the Committee on Military Affairs.

He also presented a memorial of certain officials of the Grand Army of the Republic in the State of California, remonstrating against the proposed abolishment of the branch pension agency located at San Francisco, in that State, which was referred to the Committee on Pensions.

He also presented petitions of sundry retail druggists of Eureka, Oakland, Berkeley, Emeryville, San Pablo, Concord, Crockett, Fruitvale, Stockton, Fresno, Longbeach, Monrovia, Sacramento, Oak Park, and San Jose, all in the State of California, remonstrating against the passage of the so-called "parcels-post bill," which were referred to the Committee on Post-Offices and Post-Roads.

Mr. ANKENY presented a petition of Local Union No. 202, International Typographical Union, of Seattle, Wash., praying for the removal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which was referred to the Committee on Finance.

Mr. FLINT presented a petition of the Chamber of Commerce of Los Angeles, Cal., praying for the establishment of a bureau of mines in the Department of the Interior, which was referred to the Committee on Mines and Mining.

Mr. TELLER presented petitions of Local Union No. 586, of Greeley; of Local Union No. 425, of Canyon City, of the International Typographical Union; of Local Union No. 67, of Colorado Springs, and of Local Union No. 13, of Denver, of the International Stereotypers and Eelectrotypers' Union, all in the State of Colorado, praying for the repeal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which were referred to the Committee on Finance.

He also presented a memorial of the Lumber Dealers' Association of Colorado Springs, Colo., remonstrating against the passage of the so-called "parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a memorial of the United States Monetary League, of Denver, Colo., remonstrating against the enactment of legislation providing for asset, credit, or flexible currency, which was referred to the Committee on Finance.

Mr. DICK presented a memorial of Local Branch No. 17, Glass Bottle Blowers' Association, of Massillon, Ohio, remonstrating against the enactment of legislation to prohibit the interstate transportation of intoxicating liquors in prohibition districts, which was referred to the Committee on the Judiciary.

He also presented a petition of the Central Labor Union, American Federation of Labor, of Alliance, Ohio, praying for the enactment of legislation providing for the building of all battle ships in Government navy-yards, which was referred to the Committee on Naval Affairs.

He also presented a petition of the Chamber of Mines of Los Angeles, Cal., praying for the establishment of a bureau of

mines in the Department of the Interior, which was referred to the Committee on Mines and Mining.

He also presented a petition of the National German-American Alliance, Missouri and Southern Illinois Division, of St. Louis, Mo., praying for the enactment of legislation to repeal the present anticanteen law, which was referred to the Committee on Military Affairs.

He also presented a petition of Wells Post, No. 451, Department of Ohio, Grand Army of the Republic, of Columbus, Ohio, and a petition of sundry volunteer officers of the civil war in the State of Ohio, praying for the enactment of legislation to create a volunteer retired list in the War and Navy Departments for the surviving officers of the civil war, which were referred to the Committee on Military Affairs.

He also presented a memorial of the Rhodes Glass and Bottle Company, of Massillon, Ohio, and a memorial of Local Council No. 1, United Commercial Travelers of America, of Columbus, Ohio, remonstrating against the enactment of legislation to secure the use of rural mail equipment and to place the rural service on a paying basis, and also against the consolidation of third and fourth class mail matter, etc., which were referred to the Committee on Post-Offices and Post-Roads.

He also presented petitions of Local Union No. 2, German-American Printers' Union, of Cincinnati; of Local Union No. 62, International Printing Pressmen's Union, of Columbus; of Local Union No. 54, International Typographical Union, of Dayton, and of Local Union No. 56, International Printing Pressmen's Union, of Cleveland, all in the State of Ohio, praying for the repeal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which were referred to the Committee on Finance.

Mr. LA FOLLETTE presented a petition of Local Union No. 324, International Typographical Union, of Wisconsin, praying for the repeal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which was referred to the Committee on Finance.

Mr. DIXON presented the petition of H. A. Balfour and 128 other citizens of Montana, praying for the passage of the so-called "parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

Mr. BRANDEGEE presented a petition of Company L, First Infantry, Connecticut National Guard, of Willimantic, Conn., praying for the enactment of legislation to promote the efficiency of the militia, which was referred to the Committee on Military Affairs.

He also presented a petition of the Young People's Society of Christian Endeavor of the South Congregational Church, of New Britain, Conn., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors, which was referred to the Committee on the Judiciary.

He also presented a memorial of Germania Lodge, No. 11, Sons of Herman, of Norwich, Conn., remonstrating against the enactment of legislation to regulate the interstate transportation of intoxicating liquors, which was referred to the Committee on the Judiciary.

Mr. HOPKINS presented memorials of the Germania Maennerchor Society, of Cairo; the Turnverein Vorwaerts of Chicago; the German Union of Freeport; the German Society of Freeport; the Verein Saxonia of Chicago; the Chicago Concertino Club, of Chicago; the Joliet Sharpshooters' Association, of Joliet; the Social Liedertafel Singing Society, of Chicago; the Melomania Lodge, No. 330, German Order of Hargari, of Chicago, and the Willan Rifle and Gun Club, of Chicago, all in the State of Illinois, remonstrating against the enactment of legislation to regulate the interstate transportation of intoxicating liquors in prohibition districts, which were referred to the Committee on the Judiciary.

Mr. SCOTT presented a petition of Captain Charles V. Gridley Camp, No. 94, Sons of Veterans, of Erie, Pa., praying for the enactment of legislation to increase and equalize the pay of officers and enlisted men of the Army, Navy, Marine Corps, and Revenue-Cutter Service of the United States, which was referred to the Committee on Naval Affairs.

Mr. HEMENWAY presented petitions of Local Union No. 143, International Brotherhood of Bookbinders, of Lafayette; of Local Union No. 64, International Typographical Union, of Lafayette, and of Local Union No. 454, International Typographical Union, of Huntingdon, all in the State of Indiana, praying for the repeal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which were referred to the Committee on Finance.

He also presented a memorial of Cressy City Council, No. 14, United Travelers of America, of Evansville, Ind., remonstrating against the passage of the so-called "parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of Woman's Home Missionary Society of Central Avenue Methodist Episcopal Church, of Indianapolis, Ind., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors in prohibition districts, which was referred to the Committee on the Judiciary.

Mr. STEPHENSON presented a petition of Local Union No. 12, Electrotypers' Union, of Milwaukee, Wis., praying for the repeal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which was referred to the Committee on Finance.

He also presented a memorial of Charles C. Sniteman and 78 other citizens of Neillsville, Wis., remonstrating against the passage of the so-called "parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of the Wisconsin Funeral and Embalmers' Association, of Milwaukee, Wis., praying for the enactment of legislation to regulate the practice of throwing overboard the bodies of those who died at sea, which was referred to the Committee on Public Health and National Quarantine.

Mr. BURKETT presented a petition of the Nebraska Dairymen's Association, of Gibbon, Nebr., praying for the enactment of legislation providing for the teaching of agriculture in all State normal schools, which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of sundry citizens of Bethany, Nebr., praying for the enactment of legislation to prohibit the manufacture and sale of intoxicating liquors in the District of Columbia, which was referred to the Committee on the District of Columbia.

IRRIGATION IN IMPERIAL VALLEY, CALIFORNIA.

Mr. FLINT. I present a paper prepared by C. E. Tait, irrigation engineer, on irrigation in the Imperial Valley, California, its problems and possibilities. I move that the paper be printed as a document, together with the accompanying illustration.

The motion was agreed to.

AMENDMENT OF NATIONAL BANKING LAWS.

Mr. ALDRICH. I present certain statistics bearing on the pending banking bill. I move that they be printed as a Senate document.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. MARTIN, from the Committee on Commerce, to whom were referred the following bills, reported them severally without amendment and submitted reports thereon:

A bill (S. 4809) to authorize the construction of a bridge across the Merrimac River at Tyngs Island, Massachusetts; and

A bill (H. R. 15247) to authorize the Idaho and Northwestern Railway Company to construct a bridge across the Spokane River near the city of Coeur d'Alene, Idaho.

Mr. CLAPP, from the Committee on Claims, to whom was referred the bill (S. 2742) for the relief of Joseph J. Lichty, submitted an adverse report thereon, which was agreed to, and the bill was postponed indefinitely.

He also, from the same committee, to whom were referred the following bills, reported them severally without amendment and submitted reports thereon:

A bill (S. 4632) for the relief of the Davison Chemical Company, of Baltimore, Md.;

A bill (S. 2886) for the relief of the legal representatives of the late firm of Lapene & Ferre; and

A bill (S. 1702) to reimburse H. R. King.

Mr. STEPHENSON, from the Committee on Claims, to whom was referred the bill (S. 1517) for the relief of Pacific Pearl Mullett, administratrix of the estate of the late Alfred B. Mullett, reported it without amendment and submitted a report thereon.

Mr. FLINT, from the Committee on the Geological Survey, to whom was referred the bill (S. 4171) to provide for continuation of investigations of the rivers and water resources of the United States, asked to be discharged from its further consideration, and that it be referred to the Committee on Appropriations, which was agreed to.

Mr. STONE, from the Committee on Indian Affairs, to whom was referred the bill (S. 2729) for the relief of H. A. Eldred, reported it with amendments and submitted a report thereon.

Mr. SCOTT, from the Committee on Military Affairs, to whom was referred the bill (S. 2248) for the improvement of the United States National Cemetery at Mexico City, Mexico, reported it with amendments.

BILLS INTRODUCED.

Mr. DIXON introduced a bill (S. 5206) to provide for the erection of a public building at the University of Montana, at Missoula, Mont., and the establishment of a Weather Bureau station therein, which was read twice by its title and referred to the Committee on Agriculture and Forestry.

Mr. BROWN introduced a bill (S. 5207) for the relief of William Radcliffe, which was read twice by its title and referred to the Committee on Claims.

Mr. McLAURIN introduced a bill (S. 5208) for the relief of the estate of James S. Wilson, which was read twice by its title and referred to the Committee on Claims.

Mr. CURTIS (by request) introduced a bill (S. 5209) for the removal of the restrictions on alienation of lands of allottees of the Quapaw Agency, Okla., and the sale of all tribal lands, school, agency, or other buildings on any of the reservations within the jurisdiction of such agency, and for other purposes, which was read twice by its title and referred to the Committee on Indian Affairs.

Mr. SCOTT introduced a bill (S. 5210) granting an increase of pension to Asa S. Hugill, which was read twice by its title and referred to the Committee on Pensions.

He also introduced a bill (S. 5211) for the relief of Sarah A. Sutton, which was read twice by its title and referred to the Committee on Claims.

Mr. CLAPP introduced a bill (S. 5212) to authorize the Secretary of the Interior to convey by fee-simple patent certain lands in the Otoe and Missouria Reservation, Okla., to the Society of Friends, which was read twice by its title and referred to the Committee on Indian Affairs.

Mr. CLAY introduced the following bills, which were severally read twice by their titles and referred to the Committee on Claims:

A bill (S. 5213) for the relief of the estate of James Hosford, deceased;

A bill (S. 5214) for the relief of the heirs of Francis H. McLeod; and

A bill (S. 5215) for the relief of Andrew J. Davis (with accompanying papers).

He also introduced a bill (S. 5216) granting an increase of pension to Dora Raine Willcoxan, which was read twice by its title and referred to the Committee on Pensions.

He also introduced a bill (S. 5217) to amend an act entitled "An act to extend to certain publications the privileges of second-class mail matter as to admission to the mails," approved June 6, 1900, which was read twice by its title and referred to the Committee on Post-Offices and Post-Roads.

Mr. CULBERSON introduced a bill (S. 5218) for the relief of the legal representatives of David Tooke, which was read twice by its title and referred to the Committee on Claims.

Mr. HEMENWAY introduced the following bills, which were severally read twice by their titles and referred to the Committee on Pensions:

A bill (S. 5219) granting an increase of pension to Lucinda H. Battles;

A bill (S. 5220) granting an increase of pension to Samuel Chapman;

A bill (S. 5221) granting a pension to George Rigler;

A bill (S. 5222) granting a pension to William J. Alexander;

A bill (S. 5223) granting an increase of pension to William L. Jordan; and

A bill (S. 5224) granting an increase of pension to W. T. Swift.

He also introduced a bill (S. 5225) authorizing the restoration of the name of James S. Ostrander, late first lieutenant, Eighteenth United States Infantry, to the rolls of the Army, and providing that he be placed on the list of retired officers, which was read twice by its title and referred to the Committee on Military Affairs.

Mr. TELLER introduced a bill (S. 5226) for the relief of James Broiles, which was read twice by its title and referred to the Committee on Military Affairs.

He also introduced a bill (S. 5227) granting an honorable discharge to Seth Wardell, which was read twice by its title and, with the accompanying papers, referred to the Committee on Naval Affairs.

He also introduced a bill (S. 5228) for the relief of John T. Brickwood, Edward Gaynor, Theodore Gebler, Lee W. Mix, Arthur L. Peck, Thomas D. Casanega, Joseph de Lusignan, and Joseph H. Berger, which was read twice by its title and, with the accompanying paper, referred to the Committee on Claims.

Mr. DANIEL introduced a bill (S. 5229) granting a pension to Ellen Bernard Lee, which was read twice by its title and referred to the Committee on Pensions.

Mr. SUTHERLAND introduced the following bills, which were severally read twice by their titles and referred to the Committee on Pensions:

A bill (S. 5230) granting an increase of pension to Thomas Wallace; and

A bill (S. 5231) granting an increase of pension to James S. Yates.

Mr. ALDRICH introduced a bill (S. 5232) to amend an act entitled "An act to simplify the laws in relation to the collection of the revenues," approved June 10, 1890, as amended by the act entitled "An act to provide revenues for the Government and to encourage the industries of the United States," approved July 24, 1897, which was read twice by its title and referred to the Committee on Finance.

Mr. DILLINGHAM introduced a bill (S. 5233) granting an increase of pension to Lorenzo W. Shedd, which was read twice by its title and referred to the Committee on Pensions.

Mr. TELLER introduced the following bills, which were severally read twice by their titles and referred to the Committee on Pensions:

A bill (S. 5234) granting an increase of pension to John Milburn (with accompanying paper);

A bill (S. 5235) granting an increase of pension to Albert W. Brewster (with accompanying paper);

A bill (S. 5236) granting an increase of pension to Harvey Conley;

A bill (S. 5237) granting an increase of pension to Walter A. De La Matyr;

A bill (S. 5238) granting an increase of pension to Agnes B. Otis; and

A bill (S. 5239) granting an increase of pension to George Towers.

Mr. CLAPP (for Mr. KITTREDGE) introduced a bill (S. 5240) granting an increase of pension to Charles E. Perry, which was read twice by its title and, with the accompanying paper, referred to the Committee on Pensions.

He also introduced a bill (S. 5241) granting an increase of pension to Amanda Ewing, which was read twice by its title and, with the accompanying paper, referred to the Committee on Pensions.

Mr. MARTIN introduced the following bills, which were severally read twice by their titles and referred to the Committee on Claims:

A bill (S. 5242) for the relief of Genevieve Griswold Kennon; and

A bill (S. 5243) for the relief of the heirs of Abner J. Leavenworth, deceased.

Mr. FORAKER introduced the following bills, which were severally read twice by their titles and referred to the Committee on Pensions:

A bill (S. 5244) granting an increase of pension to Robert E. Banks (with an accompanying paper);

A bill (S. 5245) granting a pension to Jennie Betts Coruns (with an accompanying paper);

A bill (S. 5246) granting an increase of pension to David Warner;

A bill (S. 5247) granting a pension to Hattie E. Goodwin;

A bill (S. 5248) granting a pension to James Johnson; and

A bill (S. 5249) granting an increase of pension to James M. Miller.

Mr. PROCTOR introduced a bill (S. 5250) granting an increase of pension to Philip Ward, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

Mr. STONE introduced a bill (S. 5251) for the relief of F. V. Lesieur, which was read twice by its title and, with the accompanying paper, referred to the Committee on Claims.

Mr. DANIEL introduced a bill (S. 5252) to provide for the building of a public avenue on the south side of the Potomac River from the city of Washington to Mount Vernon, which was read twice by its title and referred to the Committee on Claims.

Mr. LA FOLLETTE introduced a bill (S. 5253) to establish a fish-cultural station in the State of Wisconsin, which was read twice by its title and referred to the Committee on Fisheries.

Mr. FLINT introduced a joint resolution (S. R. 54) authorizing the Secretary of War to establish harbor lines in Wilmington Harbor, California, which was read twice by its title and referred to the Committee on Commerce.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. FLINT submitted an amendment proposing to appropriate $10,000 for the construction of a wagon road on the Hoopa Valley Indian Reservation, Cal., intended to be proposed by him to the Indian appropriation bill, which was re-

ferred to the Committee on Indian Affairs and ordered to be printed.

He also submitted an amendment proposing to appropriate $50,000 for the purchase of suitable tracts or parcels of land, water, and water rights and for the construction of necessary ditches, flumes, and reservoirs for the purpose of irrigating lands occupied by Indians in California, etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

Mr. BURKETT submitted an amendment proposing to appropriate $2,000,000 to be used for clerk hire in post-offices of the third class, etc., intended to be proposed by him to the post-office appropriation bill, which was referred to the Committee on Post-Offices and Post-Roads and ordered to be printed.

AMENDMENTS TO OMNIBUS CLAIMS BILL.

Mr. LODGE submitted an amendment intended to be proposed by him to House bill 15372, known as the omnibus claims bill, which was referred to the Committee on Claims and ordered to be printed.

Mr. CARTER submitted an amendment intended to be proposed by him to House bill 15372, known as the omnibus claims bill, which was referred to the Committee on Claims and ordered to be printed.

OFFICERS IN THE CIVIL WAR.

Mr. CULBERSON. Mr. President, the War Department has caused to be printed two very interesting memoranda prepared in the Military Secretary's office, War Department, one being a memorandum relative to the general officers in the armies of the United States during the civil war, 1861–1865, and the other being a memorandum relative to the general officers appointed by the president of the Confederate States in the armies of the Confederate States, 1861–1865. There is considerable demand for these pamphlets, and as the supply has been exhausted I ask that each of them may be printed as a Senate document.

Mr. CLAPP. We can not hear what the Senator says.

The VICE-PRESIDENT. The Senator from Texas asks unanimous consent that two pamphlets presented by him be printed as a document. One relates to the general officers of the United States Army during the civil war and the other to the general officers of the army of the Confederate States.

Mr. CULBERSON. I ask that they may be printed separately.

The VICE-PRESIDENT. The request is that they be printed separately. The Chair hears no objection, and it is so ordered.

FORT PECK INDIAN RESERVATION LANDS.

Mr. DIXON. The bill (S. 208) for the survey and allotmeut of lands now embraced within the limits of the Fort Peck Indian Reservation, in the State of Montana, and the sale and disposal of all the surplus lands after allotment, was reported by me with amendments from the Committee on Indian Affairs on the 6th instant. Serious errors occur in the printed bill, and I ask for a reprint.

The VICE-PRESIDENT. Without objection, it is so ordered.

RECORDS OF UNITED STATES HISTORY.

Mr. LODGE submitted the following concurrent resolution, which was referred to the Committee on the Library:

Resolved by the Senate (the House of Representatives concurring), That the American Historical Association be requested to include in its next annual report to the Secretary of the Smithsonian Institution a statement of the gaps now existing in the published records of the United States history and a plan for so directing the documentary historical publications of the Government as to supply these deficiencies.

HOUSE BILL REFERRED.

The bill (H. R. 14382) to establish a United States court at Jackson, in the eastern district of Kentucky, was read twice by its title and referred to the Committee on the Judiciary.

SALARIES IN THE EXECUTIVE DEPARTMENTS.

The VICE-PRESIDENT laid before the Senate the following message from the President of the United States, which was read and, with the accompanying paper, referred to the Committee on Appropriations and ordered to be printed.

To the Senate and House of Representatives:

I transmit herewith for the consideration of the Congress estimates for salaries in the Executive Departments and establishments prepared by the Committee on Grades and Salaries under the Executive order of June 11, 1907.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *February 11, 1908.*

SURVEY OF ST. AUGUSTINE HARBOR, FLORIDA.

Mr. BRYAN. I ask unanimous consent for the present consideration of the concurrent resolution on the Calendar, providing for a survey of the harbor of St. Augustine, Fla., and the entrance thereto, etc.

The VICE-PRESIDENT. The concurrent resolution will be read for the information of the Senate.

The Secretary read the concurrent resolution submitted by Mr. BRYAN on the 31st ultimo and reported by Mr. CLARKE of Arkansas, from the Committee on Commerce, on the 10th instant, as follows:

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and is hereby, authorized and directed to cause an examination and survey of the harbor of St. Augustine, St. Johns County, Fla., and the entrance thereto through the North and Matanzas rivers and the Matanzas Inlet, with a view to determining the formation of a channel of minimum depth of 16 feet and a width of 300 feet from the city of St. Augustine across its outer bar to the Atlantic Ocean, and the cost of construction of necessary jetties, breakwaters, and dredging in order to accomplish said purpose.

The concurrent resolution was considered by unanimous consent and agreed to.

SURVEY OF NEW SMYRNA INLET, FLORIDA.

Mr. BRYAN. I ask unanimous consent for the present consideration of the concurrent resolution on the Calendar providing for a survey of New Smyrna Inlet, Florida.

The VICE-PRESIDENT. The concurrent resolution will be read for the information of the Senate.

The concurrent resolution was read and agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and is hereby, authorized and directed to cause an examination and survey to be made of New Smyrna Inlet, in the county of Volusia and State of Florida, with a view to deepening the same, and to submit estimates therefor.

Mr. KEAN. Mr. President, let us have the regular order.

The VICE-PRESIDENT. The Calendar, under Rule VIII, will be proceeded with.

SNAKE RIVER DAM, WASHINGTON.

The bill (H. R. 7618) to authorize the Benton Water Company, its successors or assigns, to construct a dam across the Snake River, in the State of Washington, was announced as first in order on the Calendar.

Mr. HEYBURN. I ask that the bill may go to the Calendar, under Rule IX.

The VICE-PRESIDENT. The bill will go to the Calendar under Rule IX at the request of the Senator from Idaho.

BOUNTY LAND FOR SURVIVORS OF FLORIDA SEMINOLE INDIAN WAR.

The bill (S. 1407) to extend the provisions of the existing bounty-land laws to the officers and enlisted men, and the officers and men of the boat companies of the Florida Seminole Indian war was announced as next in order.

Mr. KEAN. Let the bill go over. Let it go to the Calendar under Rule IX.

The VICE-PRESIDENT. It will go to the Calendar under Rule IX at the request of the Senator from New Jersey.

Mr. KEAN subsequently said: I ask that Senate bill 1407 be restored to the Calendar under Rule VIII.

The VICE-PRESIDENT. Without objection, it is so ordered.

Mr. TALIAFERRO. I ask that the bill may be now considered.

The VICE-PRESIDENT. The bill will be read.

The Secretary read the bill, and the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes to extend the provisions of the existing bounty-land laws to include the officers and enlisted men and the officers and men of the boat companies who served during the Florida Seminole Indian war of 1856 to 1858, inclusive, and to the widows of such persons.

Mr. KEAN. Now let us have the report read.

The VICE-PRESIDENT. The Secretary will read the report at the request of the Senator from New Jersey.

The Secretary read in part the report submitted by Mr. TALIAFERRO on the 27th ultimo, the entire report being as follows:

The Committee on Pensions, to whom was referred the bill (S. 1407) to extend the provisions of the existing bounty-land laws to the officers and enlisted men and the officers and men of the boat companies of the Florida Seminole Indian war, have examined the same and respectfully report the bill back and recommend that the bill do pass.

A precisely similar bill (S. 5924) was introduced in the Fifty-ninth Congress and was favorably reported by the Senate Committee on Pensions and was passed by the Senate, but no action was taken on the bill by the House of Representatives. The report made in the Fifty-ninth Congress is adopted by the committee, and is as follows:

The Committee on Pensions, to whom was referred the bill (S. 5924) to extend the provisions of the existing bounty-land laws to the officers and enlisted men, and the officers and men of the boat companies, of the Florida Seminole Indian war, have examined the same and report:

The purpose of this bill is to include within the benefits of existing bounty laws the officers and enlisted men of the Florida Seminole Indian war of 1856–1858, and the officers and men who served in boat companies during that war, and also their widows.

The present laws provide bounty land of 160 acres for services of at least fourteen days, or participation in battle, in any war in which the United States was engaged between 1790 and March 3, 1855. No provision is made for any war since March 3, 1855.

A brief statement of the several bounty-land acts and what service is required to give title thereunder, and also of the number of military land warrants issued by the Pension Bureau up to June 30, 1904, is contained in the Annual Report of the Commissioner of Pensions, dated August 1, 1904, page 15. That statement is as follows:

SEC. 19.—BOUNTY-LAND WARRANTS.

It is a part of the duty of the Pension Bureau to issue military bounty-land warrants under the laws governing the same.

There have been several acts of Congress granting land as bounty for military service, but at present these acts are all obsolete except three—

Act of February 11, 1847 (9 Stat. L., 123).
Act of September 28, 1850 (9 Stat. L., 520).
Act of March 3, 1855 (10 Stat. L., 701).

The two above acts of 1847 and 1850 are practically obsolete now, there having been but six issues under them (840 acres) in five years.

Service to give title to bounty land must have been for at least fourteen days or in a battle prior to March 3, 1855; and if in the Navy or Regular Army must have been in some war in which the United States Government was engaged.

The following table shows—

Number of military bounty-land warrants issued and acres granted yearly for the past five fiscal years.

Grade of warrants.	Year ending June 30—					
	1904.		1903.		1902.	
	Number.	Acres.	Number.	Acres.	Number.	Acres.
Act of 1847:						
160 acres	2	320	1	160		
40 acres			1	40		
Total	2	320	2	200		
Act of 1850:						
160 acres	1	160	1	160		
Total	1	160	1	160		
Act of 1855:						
160 acres	50	8,000	10	1,600	9	1,440
120 acres	11	1,320	6	720	2	240
80 acres	3	240	1	80		
Total	64	9,560	17	2,400	11	1,680

Grade of warrants.	Year ending June 30—			
	1901.		1900.	
	Number.	Acres.	Number.	Acres.
Act of 1847:				
160 acres				
40 acres				
Total				
Act of 1850:				
160 acres				
Total				
Act of 1855:				
160 acres	9	1,440	13	2,080
120 acres	1	120	3	360
80 acres			1	80
Total	10	1,560	17	2,520

Summary, five years.

	Number.	Acres.
Act of 1847	4	520
Act of 1850	2	320
Act of 1855	119	17,720
Total	125	18,560

Total issued in fiscal year of 1904, 10,040 acres.

SEC. 20.—EPITOME OF BOUNTY-LAND HISTORY.

In the next section is submitted a report showing the total number of bounty-land warrants of all classes issued since the Revolutionary war, and the number of acres represented. Warrants issued directly from the General Land Office under special acts of Congress and on account of the Virginia military land grants satisfied by the United States after the cession of the Northwestern Territory, which aggregate a very large number of acres, are not of record in this Bureau, and are not included in this report.

The Revolutionary war and war of 1812 bounty-land acts expired by limitation June 26, 1858. These wars are included, however, in the act of March 3, 1855. The act of March 22, 1852, was superseded by the act of 1855.

The act of February 11, 1847, and supplemental acts provide 160 acres for enlisted men of the Mexican war who enlisted for a period of not less than twelve months and served out the term of their enlistment, unless sooner discharged for disability; 40 acres for those who enlisted for less than twelve months. Beneficiaries: First, soldier; second, widow and children; third, father or mother; fourth brothers and sisters.

The act of September 28, 1850, provides for officers in the Mexican war and officers and enlisted men in all other wars from 1790 to September, 1850. Beneficiaries: First, soldier; second, widow; third, minor children; fourth, father or mother; fifth, brothers and sisters.

The act of March 3, 1855, officers and enlisted men, and, under certain conditions, nonenlisted persons who served fourteen days or were engaged in battle in any war between 1790 and March 3, 1855, are entitled to 160 acres; and section 2425, Revised Statutes, provides that when a warrant for less than 160 acres has issued under any prior act an additional warrant shall issue for such quantity of land as will make in the whole 160 acres.

In explanation of any discrepancy which may exist between this and former reports as to the number of warrants issued under the act of March 3, 1855, it is stated that in former reports it appears to have been assumed that the number of the last warrant represented the total number of warrants issued.

The Commissioner of the General Land Office, in his report of outstanding warrants which have never been presented for location, appears to have assumed the same thing. A careful examination shows, however, that for various reasons 127 serial numbers have not been used and that the last serial number is just that much in advance of the number of warrants actually issued.

According to the report of the Commissioner of the General Land Office for the year ending June 30, 1902, there were then outstanding 19,680 warrants for 2,227,000 acres.

SEC. 21.—TOTAL ISSUE OF BOUNTY-LAND WARRANTS.

The following table gives the total number of military bounty-land warrants issued up to July 1, 1904:

Grade of warrants.	Warrants issued.		Remarks.
	Number.	Acres.	
War of the Revolution, acts prior to 1800.	16,663	2,666,080	Estimated average, 160 acres.
War of 1812, acts prior to 1850.	29,471	4,891,520	1,101 320-acre warrants included.
Mexican war, act of 1847:			
160 acres	80,686	12,909,760	This estimate does not include 2,726 $100 Treasury certificates issued in lieu of 160-acre warrants, and 460 $25 certificates in lieu of 40-acre warrants; in all, certificates amounting to $284,100 in lieu of warrants aggregating 454,560 acres.
40 acres	7,585	303,400	
Total	88,271	13,213,160	
Mexican, 1812, and Indian wars:			
Act of 1850—			
160 acres	27,449	4,391,840	
80 acres	57,717	4,617,360	
40 acres	103,978	4,159,120	
Total	189,144	13,168,320	
Act of 1852—			
160 acres	1,223	195,680	
80 acres	1,699	135,920	
40 acres	9,070	362,800	
Total	11,992	694,400	
Act of 1855—			
160 acres	115,521	18,483,360	
120 acres	97,077	11,649,240	
100 acres	6	600	
80 acres	49,480	3,958,400	
60 acres	400	24,000	
40 acres	541	21,640	
Total	263,030	34,137,290	

SUMMARY.

	Warrants issued.		Remarks.
	Number.	Acres.	
Revolutionary war	16,663	2,666,080	Now obsolete.
War of 1812	29,471	4,891,520	Do.
Act of 1847	88,271	13,213,160	
Act of 1850	189,144	13,168,320	
Act of 1852	11,992	694,400	Do.
Act of 1855	263,030	34,137,290	
Total	598,571	68,770,770	

The report of the Commissioner of Pensions, dated August 28, 1905, page 18, shows that the number of bounty-land warrants issued during the year ending June 30, 1905, was 41, and during the five years preceding that date, 151. His report of total number of land warrants granted up to July 1, 1905, is as follows:

"BOUNTY-LAND WARRANTS.

"During the past fiscal year 41 military bounty-land warrants were issued, granting 6,320 acres of land. The number of warrants issued during the last five years was 151, granting 22,680 acres.

"Service to give title to bounty land must have been for at least fourteen days, or in a battle prior to March 3, 1855; and, if in the Navy or Regular Army, must have been in some war in which the United States Government was engaged.

"The following table shows the total number of bounty-land warrants of all classes issued since the Revolutionary war and the number of acres granted up to July 1, 1905:

Grade of warrants.	Warrants issued.		Remarks.
	Number.	Acres.	
War of the Revolution, acts prior to 1800.	16,663	2,666,080	Estimated average, 160 acres.
War of 1812, acts prior to 1850.	29,471	4,891,520	1,101 warrants included of 320 acres each.
Total	46,134	7,557,600	
1812, Mexican, and of 1847:			
160 acres	80,687	12,900,920	This statement does not include 2,726 $100 Treasury certificates issued in lieu of 160-acre warrants and 460 $25 certificates in lieu of 40-acre warrants; in all, 454,560 acres.
40 acres	7,585	303,400	
Total	88,272	13,213,320	
1812, Mexican, and Indian wars:			
Act of 1850—			
160 acres	27,450	4,392,000	
80 acres	57,717	4,617,360	
40 acres	103,978	4,159,120	
Total	189,145	13,168,480	
Act of 1852—			
160 acres	1,223	195,680	Superseded by act of 1855.
80 acres	1,699	135,920	
40 acres	9,070	362,800	
Total	11,992	694,400	
Act of 1855—			
160 acres	115,558	18,489,280	
120 acres	97,079	11,649,480	
100 acres	6	600	
80 acres	49,482	3,958,560	
60 acres	359	21,540	
40 acres	541	21,640	
10 acres	5	50	
Total	263,030	34,141,150	

SUMMARY.

	Warrants issued.		Remarks.
	Number.	Acres.	
Revolutionary war	16,663	2,666,080	Now obsolete.
War of 1812	29,471	4,891,520	Do.
Act of 1847	88,272	13,213,320	
Act of 1850	189,145	13,168,480	
Act of 1852	11,992	694,400	Superseded by act of 1855.
Act of 1855	263,030	34,141,150	
Total	598,573	68,774,950	

"This table does not include warrants issued directly from the General Land Office under special acts of Congress and those issued on account of the Virginia military land grants satisfied by the United States after the cession of the Northwestern Territory, which are not of record in this Bureau."

Since March 3, 1855, there has been no additional legislation authorizing grant of bounty-land warrants, and no provision has been made for those who fought in the early Indian wars subsequent to that date. The Seminole Indian war, for which this bill proposes to make provision, was fought by Regular and Volunteer troops under direction of United States military authorities. That the services rendered by these troops were as arduous and important in results as the services of troops in any of the Indian wars prior to March 3, 1855, for which provision is made by existing laws, is undoubted, and there is abundant evidence thereof.

It appears from the official records that hostilities in the Seminole Indian war of the late fifties began December 20, 1855, with an attack on an exploring party under the command of Lieut. G. L. Hartsuff, Second Artillery, by a party of Indians. The war was declared closed in a proclamation of Col. Gustavus Loomis, Fifth Infantry, commanding Department of Florida, dated May 8, 1858.

The report of the Secretary of War for 1856 contains the following remark concerning the Seminole Indians:

"These Indians have within the past year given repeated evidence of their hostility, and the Department has made the necessary arrangements to carry on a vigorous campaign against them during the present season. As large a force as the demands of the service in other quarters will permit has been concentrated in Florida for this purpose, consisting of four companies of the First Artillery, ten companies of the Fourth Artillery, the Fifth Regiment of Infantry, and a limited number of volunteer militia."

In his annual report for the year 1857 the Secretary of War said:

"The Indian war in Florida claimed the attention of a strong force, composed mainly of the Fifth Infantry and Fourth Artillery, during the spring and early part of the summer. This war has been prosecuted with all the vigor which the character of the country and that of the enemy would admit of. The country is a perpetual succession of swamps and morasses, almost impenetrable, and the Indians partake rather of the nature of beasts of the chase than of men capable of resisting in fight a military power. Their only strength lies in a capacity to elude pursuit.

"Exigent affairs in the West demanded the removal of those two regiments from Florida to the Territory of Kansas; but they have been replaced by volunteers, and the pursuit of the Indians has been continued by the latter troops up to the present time. The services rendered by these volunteer troops have been spoken of in terms of merited commendation in the reports of officers in command."

The Adjutant-General, in his report for the year 1857, said:

"The exigencies of the service in Kansas and Utah compelled the Department to withdraw the Fourth Artillery and the Fifth Infantry from Florida at a time when the operations being prosecuted by these regiments appeared to give good promise of a speedy and succcessful termination of the campaign against the hostile Seminoles, in which they were engaged. The companies of the First Artillery in Florida and the volunteers which, on the transfer of so large a portion of the Regular force to other duties, it was found necessary to call into the service of the General Government have been actively employed during the past season. The hiding places resorted to by the Indians have been penetrated, and hostile parties have in several instances been so closely pressed by the troops as to barely escape capture."

In respect to pensions, the officers and enlisted men of all of the early Indian wars and their widows have the same status. The first Indian war service act, approved July 27, 1892, provided for the Black Hawk war, Creek war, Cherokee disturbances, and the Florida war with the Seminole Indians from 1832 to 1842. The second Indian war service act, approved June 27, 1902, extended the provisions of the first act to practically all of the other various early Indian wars down to 1858, inclusive. The troops who were given pensionable status under the first act—of July 27, 1892—had title to bounty-land warrant under the act of March 3, 1855, they having rendered service in a war prior to that date, and there are but few of them who have not availed themselves of the bounty of the Government in this respect. Many of those also who were given pensionable status by the second service act—of June 27, 1902—also obtained bounty land for their service, the only exception being those who rendered service subsequent to March 3, 1855.

By no parity of reasoning can this discrimination be defended, particularly with regard to those who fought in the Seminole Indian war of the late fifties, in whose behalf this legislation is proposed. Those troops performed their part worthily and with equal valor, and their recognition for similar benefits is but just and equitable.

The services of the officers and men of the boat companies for which this bill also makes provision were exceptionally arduous and hazardous and, under the conditions obtaining in Florida, absolutely necessary.

These companies were recruited for service in the everglades, bays, and swamps of Florida. They were armed and equipped as soldiers and acted under orders of a Regular Army officer. The rules and regulations applicable to them were those in force with the regularly enrolled soldiers of the United States. They were thoroughly acquainted with the country, and without their effective aid the war would have been greatly prolonged, the service of the Regular troops proving futile in the tracking and pursuit of the hostile Indians. They were the men able to track the Indians to their strongholds in the everglades; they served as guides, boatmen, trailers, and their service was hazardous in the extreme and subjected them to hardships and exposures unusual even in that region. Wagon masters and teamsters who were employed under direction of competent authority in time of war in the transportation of military stores and supplies were given title to bounty-land warrants by the act of March 3, 1855, and the services of the officers and men of the boat companies of the Seminole Indian war are eminently more worthy of recognition.

No definite statement can be made of the number likely to be benefited under the provisions of this bill. In January, 1900, the Commissioner of Pensions estimated the number of survivors of the Seminole war, from 1842 to 1858, as 1,002 and the number of widows at 700. That was six years ago, and in the very nature of things their number is considerably less now. It is about fifty years since this war was fought; its survivors are old and gray, and their numbers rapidly diminish each succeeding year.

The Florida boat companies numbered about 300 officers and men, and it is safe to predict that there will not be as many as 100 beneficiaries from them under this bill.

In money this legislation will cost the Government nothing. It simply extends the existing bounty-land laws to a few worthy soldiers, who settled once and for all the Indian troubles in Florida and won for peaceful habitation a large part of that territory. It has been only within a few years past that they have been rewarded with pensions, and it but seems fitting and proper that they should be put on the same footing as to bounty land as the survivors of the other early Indian wars.

Your committee commend the legislation as just and equitable and recommend the passage of the bill.

Mr. KEAN. Perhaps the Senator from Florida can give me the information I desire on this subject without having the entire report read. What I desire to know is how much land will it take and what is the scope of the bill?

Mr. TALIAFERRO. The report ought to show what the Pension Bureau has to say on the subject. There are some twelve or fifteen hundred of these pensioners in the State of Florida. The bill seeks to put them in the exact attitude of pensioners of every other Indian war.

The act of 1855 gave to the survivors of the Indian wars land bounty up to that period, and the bill seeks to continue it so as to take in the period from 1855 to 1858.

Mr. KEAN. And it would take about 140,000 acres of land?

Mr. TALIAFERRO. I do not know exactly, but possibly.

Mr. KEAN. Would it take 250,000 acres?

Mr. TALIAFERRO. No; I should say not 250,000 by any means, but possibly 150,000 acres.

Mr. KEAN. If fifteen hundred people get 160 acres each, it would take 240,000 acres.

Mr. TALIAFERRO. The lands, I understand, come from Florida.

Mr. KEAN. Are they all in the State of Florida?

Mr. TALIAFERRO. I understand they are all in the State of Florida. That is my understanding.

Mr. KEAN. If the land that is to be taken is confined to the State of Florida, of course I have nothing to say on the subject.

Mr. TALIAFERRO. That is my understanding.

Mr. HOPKINS. The Senator had better offer an amendment of that kind.

Mr. KEAN. Will the Senator from Florida agree to amend the bill so as to provide that the lands shall be taken in the State of Florida?

Mr. TALIAFERRO. I did not catch what the Senator said.

Mr. KEAN. That the lands shall be taken exclusively in the State of Florida.

Mr. TALIAFERRO. That is my understanding of it. There are over half a million acres of Government land in the State of Florida, and they would hardly go out of the State to extend these bounty-land laws to pensioners when the land was in the State.

Mr. KEAN. Then, would it not be as well to amend the bill so as to provide that the land shall be taken entirely within the State?

Mr. TALIAFERRO. The bill in its present form passed the Senate in the last Congress. It is now in exactly the form it was in at that time. I hope the Senator will not insist on an amendment.

Mr. KEAN. I think it ought to be amended so as to take the lands in the State of Florida.

The VICE-PRESIDENT. The bill is in Committee of the Whole and open to amendment.

Mr. KEAN. I move to add as an amendment the following proviso:

Provided, That the lands so taken shall be in the State of Florida.

Mr. BACON. On the matter of public lands, I should like to ask the Senator from New Jersey if he knows of any instance in which heretofore there has been such a limitation upon any such grant of land to a particuler State?

Mr. KEAN. I think in Arkansas, in Louisiana, and in other States.

Mr. BACON. It has been done in former instances?

Mr. KEAN. I think so.

Mr. BACON. Is the Senator sure of it? The Senator says he thinks so, but if he has any definite information I would be glad to have him furnsh it.

Mr. KEAN. The only definite information would be obtained by looking up the actual statutes, but I think it has been done.

Mr. BACON. If the Senator has definite knowledge of the fact that such has been the practice, then I can see no reason why it should not be followed in this instance, but if it has not been done heretofore it seems to me that there should not be a difference made in this case.

Mr. TALIAFERRO. Mr. President——

The VICE-PRESIDENT. Does the Senator from New Jersey yield to the Senator from Florida?

Mr. KEAN. Certainly.

Mr. TALIAFERRO. There has been no provision of this sort incorporated in the other land-bounty acts giving lands to the survivors of the Indian wars. If these men are entitled to the land in Florida, and it should be possible under this act for them to get it elsewhere, I see no reason why there should be any exceptions made against them and that they should be confined to one State when others have been permitted to get land in another State.

I am not contending that they will go to another State, but even if that should prove to be the case I see no reason why there should be a discrimination against these men, and I hope the Senate will reject any amendment looking to a discrimination against them. The purpose of the bill is to put them on a footing with the survivors of other Indian wars. Nothing more is asked, and nothing less should be extended to them.

Mr. CLARK of Wyoming. I assume, of course, that these survivors are entitled to the relief proposed to be given by the bill, because it has undoubtedly gone through the scrutiny of the Pension Office and through the committee's scrutiny. I think the Senator from New Jersey, upon reflection, will see that it would be unjust to offer an amendment; that it would be not only unjust to these survivors, but unjust to other States having public lands within their borders.

We are all of us seeking, as far as we can, to put the lands in our States in private ownership, in small holdings, and I know, as far as the State which I in part represent is concerned, we will gladly welcome the taking of 160 acres each by a good many people, whether survivors of the Indian wars or not, within the confines of the State.

Mr. KEAN. But these are not homesteaders.

Mr. CLARK of Wyoming. Even if they are not homesteaders, a man who has 160 acres of land makes some beneficial use of it, whereas, if it is not taken by anyone, no beneficial use whatever is made of it. I think the Senator will see the manifest injustice of throwing a restriction around it.

Mr. KEAN. I will not insist on the amendment.

The VICE-PRESIDENT. The Senator from New Jersey withdraws his amendment.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

MINING TECHNOLOGY BRANCH.

The next business on the Calendar was the joint resolution (S. R. 35) to provide for a mining technology branch in the Geological Survey.

Mr. KEAN. Let that go over.

The VICE-PRESIDENT. The joint resolution will go over without prejudice, at the request of the Senator from New Jersey.

AMENDMENT OF NATIONAL BANKING LAWS.

The bill (S. 3023) to amend the national banking laws was announced as next in order.

Mr. HOPKINS. Let the bill go over under Rule IX.

The VICE-PRESIDENT. The bill will go to the Calendar, under Rule IX, at the request of the Senator from Illinois.

STEWART & CO. AND A. P. H. STEWART.

The bill (S. 3843) for the relief of the legal representatives of Stewart & Co. and A. P. H. Stewart was announced as next in order.

Mr. HOPKINS. I ask that the bill may go over under Rule IX.

The VICE-PRESIDENT. The bill will go to the Calendar, under Rule IX, at the request of the Senator from Illinois.

O BAH BAUM.

The bill (S. 4103) authorizing the Secretary of the Interior to ascertain the amount due O bah baum, and pay the same out of the fund known as "For the relief and civilization of the Chippewa Indians," was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

PETER FLEMING.

The bill (S. 1893) granting an honorable discharge to Peter Fleming was considered as in the Committee of the Whole. It directs the Secretary of War to grant an honorable discharge to Peter Fleming, late of Battery E, Third Artillery.

Mr. KEAN. Ought not the bill to be amended so as to provide that no pay, bounty, or other allowance shall accrue?

The VICE-PRESIDENT. Does the Senator from New Jersey move that amendment?

Mr. KEAN. I do. I move to add at the end of the bill the following proviso:

Provided, That no pay, bounty, or other emolument shall accrue by reason of the passage of this act.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

FORT RILEY MILITARY RESERVATION LAND.

The bill (S. 3157) to authorize the War Departemnt to transfer certain land belonging to the Fort Riley Military Reservation to the State of Kansas was considered as in Committee of the Whole.

The bill was reported from the Committee on Military Affairs with an amendment, to strike out all after the enacting clause and to insert:

That the Secretary of War be, and he is hereby, authorized and directed to grant to the State of Kansas the right, title, and interest of the United States in and to a tract of land, not to exceed 1 acre of ground, whereon is located the ruins of the old station building which was the first Kansas Territorial capitol at Pawnee, now included in military reservation of Fort Riley, Kans., for the preservation of said ruins as a historical relic, the metes and bounds of said tract to be determined by the Secretary of War.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

THOMAS C. CHAPPELL.

The bill (S. 1699) for the relief of Thomas C. Chappell was considered as in Committee of the Whole.

The bill was reported from the Committee on Military Affairs with an amendment, on page 1, line 10, after the word "Fort," to strike out "Armistea" and insert "Armistead, and the strips

of land lying between said sea wall and the said tract of 12.47 acres, approximating 1.28 acres," so as to make the bill read:

Be it enacted, etc., That when Thomas C. Chappell shall convey a good and perfect title in fee to the United States to the following three pieces or parcels of land in Anne Arundel County, State of Maryland—

First. The land on which the sea wall was built by the United States on the north and east fronts of a tract of land in said county containing 12.47 acres, now a military post and known as Fort Armistead, and the strips of land lying between said sea wall and the said tract of 12.47 acres, approximating 1.28 acres.

Second. The land on which the United States has built a wharf, extending from said post or fort to the navigable portions of Patapsco River.

Third. A tract of 31.20 acres of land, having a front on the said river and lying west of and adjoining said 12.47 acres and being the land which said Chappell claims to have sold to the United States in July, 1900, and has brought suit in the Court of Claims for the alleged purchase price thereof.

And when the said Chappel shall further receipt in full for and relinquish all claims against the United States for and on account of use of, damage to, and trespass on the properties of said Chappell now pending in the War Department in sundry and divers claims, there shall then be paid by the Secretary of the Treasury to the said Chappell the sum of $21,048 out of any money in the Treasury not otherwise appropriated.

The amendment was agreed to.

The bill was reported to the Senate as amended and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

PAY OF THE ARMY.

The bill (S. 4030) to fix the pay of the Army was announced as next in order.

Mr. SCOTT. I observe that the chairman of the Committee on Military Affairs is not in the Chamber, neither is the Senator from Maine [Mr. HALE], who proposes to offer an amendment to this bill. I ask that the bill may go over, retaining its place on the Calendar.

The VICE-PRESIDENT. The bill will go over without prejudice, at the request of the Senator from West Virginia.

SURVEY OF CAPE FEAR RIVER, NORTH CAROLINA.

The next business on the Calendar was the concurrent resolution submitted by Mr. OVERMAN on January 27, 1908, and reported by Mr. SIMMONS, from the Committee on Commerce, January 30, 1908, which was read, as follows:

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and he is hereby, authorized and directed to cause a survey to be made of the Cape Fear River, North Carolina, from the city of Wilmington to the ocean, with a view to dredging and otherwise improving the same, and thereby obtaining a minimum depth of 30 feet, and of sufficient width, and to submit a plan and estimate of cost of such improvement; such plan and estimate shall embrace the said increased depth and width over and above the existing project, and also a separate plan and estimate for the increased depth and requisite width based upon the existing depth and width of the present channel from the city of Wilmington to the ocean.

The VICE-PRESIDENT. The question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to.

FISH-CULTURAL STATION IN OKLAHOMA.

The bill (S. 3426) to establish a fish hatchery and biological station in the State of Oklahoma was considered as in Committee of the Whole.

The bill had been reported from the Committee on Fisheries with an amendment, in line 5, after the word "fish-cultural," to strike out "and biological;" and in line 9, after the words "by the," to strike out "United States Commissioner of Fish and Fisheries" and insert "Secretary of Commerce and Labor," so as to make the bill read:

Be it enacted, etc., That the sum of $25,000, or so much thereof as may be necessary, be, and the same is hereby, appropriated for the establishment of a fish-cultural station in the State of Oklahoma, including purchase of site, construction of buildings and ponds, and equipment, at some suitable point in said district to be selected by the Secretary of Commerce and Labor.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to establish a fish-cultural station in the State of Oklahoma."

FISH-HATCHING AND FISH-CULTURE STATION IN TENNESSEE.

The bill (S. 4455) to establish a fish-hatching and fish-culture station in the State of Tennessee was considered as in Committee of the Whole. It proposes to appropriate $25,000 for the establishment of a fish-hatching and fish-culture station in the State of Tennessee, at a suitable point in the discretion of the Secretary of Commerce and Labor, including purchase of site, construction of buildings, and equipment.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

MARINE FISHERY STATION ON PACIFIC COAST.

The bill (S. 3433) to establish on the coast of the Pacific States a station for the investigation of problems connected with the marine-fishery interests of that region was considered as in Committee of the Whole. It directs the Secretary of Commerce and Labor to establish at some suitable point on the coast of the Pacific States a station for the investigation of problems connected with the marine-fishery interests of that region; and for the necessary surveys, purchase of land, erection of buildings and other structures, and the proper equipment of such a station it appropriates $50,000.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

FISH HATCHERY IN OREGON.

The bill (S. 439) granting to the State of Oregon certain lands to be used by it for the purpose of maintaining and operating thereon a fish hatchery, was considered as in Committee of the Whole.

The bill had been reported from the Committee on Fisheries with an amendment, on page 2, line 3, after the words "period of," to strike out "five" and insert "two," so as to make the bill read:

Be it enacted, etc., That the following-described premises, to wit: All that portion of that certain island situated in Snake River and commonly known as Morton Island, which, when the public surveys shall have been extended so as to include the same, shall be within the boundaries of the southwest quarter of the southwest quarter of section 14 and the south half of the south half of section 15, in township 18 south, of range 47 east of the Williamette meridian, in the State of Oregon, be, and the same is hereby, granted to the State of Oregon, for the use of said State in maintaining and operating thereon a fish hatchery: *Provided*, That in case said State of Oregon shall at any time for a period of two years fail to maintain and operate a fish hatchery on said premises, or on some part thereof, then the grant hereinbefore made of said premises to said State shall terminate, and said premises, and the whole thereof, shall revert to the United States: *Provided further*, That the Secretary of the Interior is hereby authorized and empowered to ascertain and determine whether or not such hatchery is being maintained and operated on said premises, and if he shall at any time determine that, for a period of two years subsequent to the passage of this act, the State of Oregon has failed to maintain and operate a fish hatchery on said premises, he shall make and enter an order of record in his Department to that effect, and directing the restoration of said premises, and the whole thereof, to the public domain, and such order shall be final and conclusive, and thereupon and thereby said premises shall be restored to the public domain and freed from the operation of the grant aforesaid.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

MARINE BIOLOGICAL STATION ON FLORIDA COAST.

The bill (S. 3351) to authorize the establishment of a fish-cultural and biological station on the Gulf of Mexico within the limits of the State of Florida was considered as in Committee of the Whole.

The bill had been reported from the Committee on Fisheries with amendments. The first amendment was, in section 1, page 1, line 3, after the word "the," to strike out "Commissioner of Fish and Fisheries" and insert "Secretary of Commerce and Labor;" in line 5, after the words "establish a," to strike out "fish-cultural and;" in line 6, after the word "on," where it first occurs, to strike out "or near;" and in the same line, after the word "on," where it occurs the second time, to strike out the words "or near," so as to make the section read:

That the Secretary of Commerce and Labor be, and he is hereby, authorized, empowered, and directed to establish a biological station on the Gulf of Mexico at a point on the coast of the State of Florida, to be selected by him in said State: *Provided*, That the State of Florida donates and transfers, free of cost, to the Government of the United States necessary land and water rights upon which may be erected such buildings, wharves, and other structures as may be necessary for the proper equipment of said station.

The amendment was agreed to.

The next amendment was, in section 2, page 2, line 9, after the words "by the," to strike out "Commissioner of Fish and Fisheries" and insert "Secretary of Commerce and Labor," so as to make the section read:

SEC. 2. That the professors, instructors, and students of the several land-grant, agricultural, and mechanical colleges of the United States shall be admitted to said station to pursue such investigation in fish culture and biology as may be practicable, without cost to the Government, under such rules and regulations as may be from time to time prescribed by the Secretary of Commerce and Labor.

The amendment was agreed to.

The next amendment was, in section 3, line 13, after the words "sum of," to strike out "one hundred" and insert "fifty," so as to make the section read:

SEC. 3. That for the necessary surveys, erection of buildings and other structures, and for the proper equipment of said fish-cultural and biological station, the sum of $50,000, or so much as may be necessary, be, and is hereby, appropriated out of any money in the Treasury not otherwise appropriated.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to establish a marine biological station on the Gulf coast of the State of Florida."

PUBLIC EDUCATION IN THE DISTRICT OF COLUMBIA.

The bill (S. 4032) to establish the direction and control of public education in the District of Columbia was announced as next in order on the Calendar.

Mr. KEAN. Let that bill go to the Calendar under Rule IX, Mr. President.

The PRESIDING OFFICER (Mr. GALLINGER in the chair). The bill will go to the Calendar under Rule IX, at the request of the Senator from New Jersey.

PENSIONS AND INCREASE OF PENSIONS.

The bill (S. 4740) granting pensions and increase of pensions to certain soldiers and sailors of the civil war and certain widows of such soldiers and sailors, was considered as in Committee of the Whole. It proposes to place upon the pension roll at the rate per month therein specified the following-named persons:

William P. Damon, late of Company B, Thirty-first Regiment Maine Volunteer Infantry, $36;

Nathan H. Landers, late second lieutenant Company H, Twenty-ninth Regiment Maine Volunteer Infantry, $36;

Joel Brown, late of Third Battery, Kansas Volunteer Light Artillery, $30;

Lewis T. Penwell, late of Company B, Seventy-third Regiment Indiana Volunteer Infantry, $30;

Noah Greer, late of Company C, Fourth Regiment Tennessee Volunteer Cavalry, $30;

Joseph Marsh, late of Company K, First Regiment New Jersey Volunteer Cavalry, $30;

Henry, alias Halden, Hanson, late of Company G, Twelfth Regiment Iowa Volunteer Infantry, $30;

Andrew F. Kenyon, late of Company E, Fourteenth Regiment New York Volunteer Heavy Artillery, $30;

Catherine Kolb, widow of George Kolb, late of Company F, Third Regiment, and Company K, Forty-fourth Regiment, Wisconsin Volunteer Infantry, $12;

Samuel D. Chase, late of Company H, First Regiment Michigan Volunteer Infantry, $24;

William J. Showaker, late of Company F, Twenty-seventh Regiment, and Company I, One hundred and ninety-eighth Regiment, Pennsylvania Volunteer Infantry, $30;

Mary E. Edmondson, widow of Sylvester Edmondson, late of Company D, One hundred and ninety-seventh Regiment Pennsylvania Volunteer Infantry, $8;

Susan A. Vantine, widow of Joseph E. Vantine, late of U. S. S. *North Carolina*, *Richmond*, and *Princeton*, United States Navy, $12 per month and $2 per month additional on account of each of the minor children of the said Joseph E. Vantine until they reach the age of 16 years;

William C. Shook, late of Company D, Seventy-fourth Regiment Indiana Volunteer Infantry, $40;

Edward C. Ellet, late second lieutenant Company A, First Regiment Mississippi Marine Brigade Volunteer Infantry, $30;

William J. Downin, late hospital steward, Thirty-first Regiment Indiana Volunteer Infantry, $24;

William Morrison, late of Company G, Seventy-ninth Regiment New York Volunteer Infantry, $12;

Catherine J. V. Racey Young, widow of J. Morris Young, late colonel Fifth Regiment Iowa Volunteer Cavalry, $12;

Victoria Ficker, former widow of John Stotzheim, late of Company C, Twenty-fourth Regiment Wisconsin Volunteer Infantry, $8;

William W. Payton, late of Company K, Nineteenth Regiment Indiana Volunteer Infantry, $30;

Mary J. Martin, widow of Robert B. Martin, late captain Company D, Fifty-seventh Regiment Indiana Volunteer Infantry, $20;

John Sargent, late of Company A, First Battalion Fourteenth Regiment United States Infantry, $30;

Josephine E. Peabody, widow of Warren A. Peabody, late musician, First Brigade Band, Second Division, Ninth Army Corps, $12;

Charles W. Foss, late of Company E, First Regiment New Hampshire Volunteer Heavy Artillery, $24;

Hattie T. Atwood, widow of Ambrose L. Atwood, late of Company K, Ninth Regiment Rhode Island Volunteer Infantry, $12;

Elizabeth W. Shaw, widow of James Shaw, late colonel Seventh Regiment United States Colored Volunteer Infantry, $30;

Robert P. Faris, late of Companies G and B, Forty-seventh Regiment Illinois Volunteer Infantry, $24;

J. Rock Williamson, late of Company G, One hundred and fifth Regiment Illinois Volunteer Infantry, $24;

Frederick A. Heebner, late of Company F, Twelfth Regiment Indiana Volunteer Cavalry, $24;

Charles Clark, late of Company K, Eleventh Regiment Minnesota Volunteer Infantry, $24;

Mary C. Mulholland, widow of Charles Bradley Mulholland, late acting third assistant engineer, United States Navy, $12;

John H. Vickery, late of Company B, Tenth Regiment New Hampshire Volunteer Infantry, $24;

Eliza J. Roberts, widow of David F. Roberts, late of U. S. S. *North Carolina*, *Niagara*, and *Anacostia*, United States Navy, $20: *Provided*, That in the event of the death of Jona H. Roberts, helpless and dependent child of the said David F. Roberts, the additional pension herein granted shall cease and determine;

Josephine E. Wooster, widow of Samuel R. Wooster, late major and surgeon, First Regiment Michigan Volunteer Cavalry, $20;

James Ennis, late of Company A, Fourth Regiment Wisconsin Volunteer Cavalry, $30;

James B. Wolgemuth, late of Company H, Seventy-third Regiment Illinois Volunteer Infantry, $24;

William S. Clark, late of Company K, Third Regiment New Jersey Volunteer Infantry, $24;

William A. Gile, late captain Company D, One hundred and seventeenth Regiment United States Colored Volunteer Infantry, $30;

John A. Hodson, late of Company B, Fourth Regiment Missouri State Militia Volunteer Cavalry, $30;

Lucretia Wilson, widow of John W. Wilson, late second lieutenant Company H, Fifty-seventh Regiment Indiana Volunteer Infantry, $16;

Legare Potter, late first lieutenant Company K, Fourth Regiment Wisconsin Volunteer Cavalry, $24;

Stephen J. Hook, late of Company F, Forty-second Regiment Wisconsin Volunteer Infantry, $30;

Alonzo D. Holland, late of Company M, First Regiment Michigan Volunteer Engineers and Mechanics, $24;

John Sirrine, late of Company C, Seventieth Regiment New York Volunteer Infantry, and Company D, Second United States Cavalry, $30;

Jesse F. Logsdon, late of Company A, First Regiment Oregon Volunteer Infantry, $24;

Lewis C. Cleavinger, late of Company C, Thirty-fourth Regiment Iowa Volunteer Infantry, $24;

Paul Stowell, late of Company G, One hundred and fifty-seventh Regiment New York Volunteer Infantry, $24;

William Weston, late of Company E, Fifth Regiment New Hampshire Volunteer Infantry, $30;

John Chase, late of Company K, Thirty-ninth Regiment Massachusetts Volunteer Infantry, $30;

John Allman, late of Company E, Thirty-sixth Regiment Wisconsin Volunteer Infantry, $36;

Nelson Moore, late of Company A, Sixth Regiment Wisconsin Volunteer Infantry, $30;

Joseph M. Feather, late of Company F, Seventeenth Regiment West Virginia Volunteer Infantry, $24;

Ambrose P. Phillips, late of Company G, Eleventh Regiment Maine Volunteer Infantry, $24;

Alfred W. Wright, late of Company H, and first lieutenant Company B, Eighteenth Regiment Illinois Volunteer Infantry, $30;

Isabella Ann Irvin, widow of Charles H. Irvin, late captain and assistant quartermaster, United States Volunteers, $20;

John S. Landon, late of Company C, Thirteenth Regiment Wisconsin Volunteer Infantry, $24;

Lavinia B. Persons, widow of Henry S. Persons, late of Company C, Twenty-fifth Regiment Connecticut Volunteer Infantry, $16;

Charles S. Leonard, alias Abner L. Wilcox, late of Company B, Second Regiment United States Infantry, $24;

Ida L. Read, widow of Burleigh C. D. Read, late of Company B, One hundred and thirty-second Regiment Ohio National Guard Infantry, $12 and $2 per month additional on account of the minor child of said Burleigh C. D. Read until he reaches the age of 16 years;

John A. Van Pelt, late of Company D, One hundred and twenty-seventh Regiment Illinois Volunteer Infantry, $24;

Hugh H. McCurry, late of Company F, First Regiment Wisconsin Volunteer Infantry, $40;

Celia A. Smith, widow of Sidney G. Smith, late of Company K, Seventeenth Regiment Illinois Volunteer Cavalry, $12;

George M. D. Wells, late of Company K, Fifteenth Regiment, and Company F, Tenth Regiment, West Virginia Volunteer Infantry, $30; and

William H. Stiles, late of Company G, Twelfth Regiment Maine Volunteer Infantry, $30.

Mr. McCUMBER. I move to amend by striking out the item from line 23 on page 7 to the end of line 2 on page 8.

The VICE-PRESIDENT. The amendment proposed by the Senator from North Dakota will be stated.

The SECRETARY. On page 7, after line 22, it is proposed to strike out the following:

The name of William A. Gile, late captain Company D, One hundred and seventeenth Regiment United States Colored Volunteer Infantry, and pay him a pension at the rate of $30 per month in lieu of that he is now receiving.

Mr. McCUMBER. The reason for this amendment is the death of the soldier named.

The amendment was agreed to.

Mr. McCUMBER. I also move to amend on page 8 by striking out the item from line 3 to line 6, inclusive.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 8, after line 2, it is proposed to strike out the following:

The name of John A. Hodson, late of Company B, Fourth Regiment Missouri State Militia Volunteer Cavalry, and pay him a pension at the rate of $30 per month in lieu of that he is now receiving.

Mr. McCUMBER. The reason for this amendment is the death of the beneficiary.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

BAYOU BARTHOLOMEW BRIDGE, ARKANSAS.

The bill (H. R. 14040) to authorize the county of Ashley, State of Arkansas, to construct a bridge across Bayou Bartholomew at a point above Morrell, in said county and State, the dividing line between Drew and Ashley counties, was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

OCEAN MAIL SERVICE.

The bill (S. 28) to amend the act of March 3, 1891, entitled "An act to provide for ocean mail service between the United States and foreign ports and to promote commerce" was considered as in Committee of the Whole.

The bill was reported from the Committee on Commerce with an amendment, in line 6, after the word "routes," to strike out "across the Pacific Ocean or to ports of the South Atlantic" and insert "to South America, to the Philippines, to Japan, to China, and to Australasia," so as to make the bill read:

Be it enacted, etc., That the Postmaster-General is hereby authorized to pay for ocean mail service under the act of March 3, 1891, in vessels of the second class on routes to South America, to the Philippines, to Japan, to China, and to Australasia, 4,000 miles or more in length, outward voyage, at a rate per mile not exceeding the rate applicable to vessels of the first class as provided in said act.

The amendment was agreed to.

Mr. CLAY. Mr. President, I should like to ask the Senator in charge of the bill to explain it. Is it the same as the bill we discussed at the last session?

Mr. GALLINGER. Mr. President, I will say to the Senator that it is an entirely different bill. This bill simply extends the mail act of 1891 to ships of the second class; that is, it gives them the same pay that ships of the first class are now receiving. In other words, under the existing law ships of 20 knots receive $4 per mile on the outward voyage. This bill proposes to amend that law by giving the same compensation to ships of the second class, which are ships of 16 knots an hour.

It is believed that this legislation will result in establishing lines of steamships, one at least to Australasia and two at least to South America, the cost of which will not be in excess, as it is believed, of the profits that are now derived from our ocean mail service.

I will say to the Senator that an elaborate report has been made, which I trust he has had time to read. The Committee on Commerce were not much divided on this question. It is not in the nature of a subsidy, which has been so strongly opposed, but it is simply extending a law which has been in operation since 1891 and concerning which, so far as I know, no objection has ever been raised.

Mr. CLAY. I will say to the Senator——

The VICE-PRESIDENT. Does the Senator from New Hampshire yield to the Senator from Georgia?

Mr. GALLINGER. With pleasure.

Mr. CLAY. I will say to the Senator that I have not read the report. I have only read the bill. I think I received the report this morning, but I have been so busy that I have not had time to read it. I do not know what position I shall take in regard to the bill until I can carefully consider it. Does the Senator want it passed on now?

Mr. GALLINGER. Certainly not, unless the Senate is ready to act on it. I have no disposition to crowd the bill unduly.

Mr. CLAY. I will say to the Senator that I have no disposition to delay the bill if it deals simply with mail facilities and proposes merely to give better mail facilities.

Mr. GALLINGER. That is absolutely all it does.

Mr. CLAY. That is a different matter from the subsidy bills we have been discussing in previous Congresses. If the Senator will let the bill go over, I will have no objection to naming a day for its consideration.

Mr. GALLINGER. Mr. President, acting on the suggestion of the Senator from Georgia, I ask unanimous consent that on Monday next, after the routine morning business, this bill may be taken up for consideration.

The VICE-PRESIDENT. The Senator from New Hampshire asks unanimous consent that the pending bill be taken up for consideration on Monday next after the close of the routine morning business. Is there objection? The Chair hears none, and it is so ordered.

SHELBY COUNTY, TEX.

The bill H. R. (6231) to attach Shelby County, in the State of Texas, to the Beaumont division of the eastern judicial district of said State and to detach it from the Tyler division of said district, was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

GRAND CALUMET RIVER BRIDGE, INDIANA.

The bill (H. R. 13430) to authorize the Chicago, Indianapolis and Louisville Railway Company to construct a bridge across the Grand Calumet River in the city of Hammond, Ind., was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

POWELLS RIVER BRIDGE, TENNESSEE.

The bill (H. R. 14781) to authorize Campbell County, Tenn., to construct a bridge across Powells River, was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY.

The bill (S. 3976) to authorize and require the Philadelphia, Baltimore and Washington Railroad Company to maintain and operate a track connection with the United States Navy-Yard in the city of Washington, D. C., was considered as in Committee of the Whole.

The bill was reported from the Committee on the District of Columbia with an amendment to strike out all after the enacting clause and insert:

That the Philadelphia, Baltimore and Washington Railroad Company be, and it is hereby, authorized and directed to construct a single branch track or siding from its present main line, at some point, to be approved by the Commissioners of the District of Columbia, between the bridge over the Anacostia River at Pennsylvania avenue SE. and 1,000 feet westerly therefrom; thence extending by a curve in a southwestwardly direction across square south of 1080, to Fifteenth street, east; thence southwestwardly on a line generally parallel to the center line of Water street, at such distance between the center line of Water street and the present approved north bulkhead line of the Anacostia River as shall be approved by the Commissioners of the District of Columbia, crossing Fifteenth street SE., Fourteenth street SE., Thirteenth street SE., Twelfth street SE., M and N streets SE., and Virginia avenue; thence in a southwestwardly direction, by curve or otherwise, as the Commissioners of the District of Columbia shall approve, crossing Twelfth street SE. and square south of 1001 to the north abutment of the Anacostia River bridge at the foot of Eleventh street SE.; thence passing under the north end of the said Anacostia River bridge at such point as may be determined by the Com-

missioners of the District of Columbia; thence across Eleventh street SE., square 979, Tenth street SE., square 955, and Ninth street SE., on a line generally parallel to the north bulkhead line of the Anacostia River, as now approved, and between it and 100 feet distant therefrom, as may be determined by the Commissioners of the District of Columbia, to a connection with the track system of the United States navy-yard.

SEC. 2. That the location of said track, and the grade thereof, and the plans of construction outside of the United States navy-yard, shall be approved by the Commissioners of the District of Columbia, and the said Commissioners are also authorized and empowered to make from time to time all needful regulations for the movement of trains, cars, and locomotives over the same.

The Philadelphia, Baltimore and Washington Railroad Company shall also pave such crossings or other portions of public space occupied by said track and 2 feet exterior to the rails thereof, as the Commissioners of the District of Columbia may require, and keep the same in repair at all times. In case it shall be determined at any future time to locate or carry any public street or highway across said track the cost and expense thereof shall be borne and defrayed by the Philadelphia, Baltimore and Washington Railroad Company, its successors and assigns, in the manner provided in section 10 of the act of Congress providing for a Union Station in the District of Columbia, and for other purposes, approved February 28, 1903.

SEC. 3. That it shall be the duty of the Commissioners of the District of Columbia, and they are hereby authorized and empowered, whenever they consider it a public benefit, to grant the Philadelphia, Baltimore and Washington Railroad Company permission to lay, maintain, and use sidetracks and sidings from the branch track herein authorized south of said branch track between Twelfth and Fifteenth streets east, and also into squares 955, 979, south of 1025, and east of 1025, and south of 1001, and south of 1048: *Provided*, That such tracks or sidings shall be laid and maintained under the direction of the said Commissioners in such manner as to least interfere with the free and unobstructed use of the public streets.

SEC 4. That the entire cost and expense of obtaining the necessary right of way and the entire cost and expense of constructing the branch track herein authorized and the connections necessary at or in the navy-yard shall be paid and defrayed by the Philadelphia, Baltimore and Washington Railroad Company, but the said Philadelphia, Baltimore and Washington Railroad Company shall not acquire any riparian rights by reason of the location of said track through public space or through any right of way necessary to be acquired.

SEC. 5. That where the line as approved by said Commissioners lies within the bed of any public highway or through any public space, said company is hereby given the right to occupy such portion of said highway as may be approved by said Commissioners, and where such approved route crosses private property the said railroad company is hereby authorized to acquire a sufficient right of way by purchase, and in the event that said right of way can not be purchased at a price satisfactory to said railroad company, authority is hereby conferred upon said railroad company to condemn the land necessary for such right of way, in the manner and by the method and processes provided by sections 648 to 663, both inclusive, of the Revised Statutes relating to the District of Columbia, which said sections, despite any repeal thereof, are hereby continued in full force and effect, for the purposes contemplated by this act, and are especially enacted to like effect as if the same were incorporated herein at length: *Provided*, That in every case where an assessment for damages or an award shall have been returned by the appraisers, the company, upon paying into court the amount so assessed or awarded, may enter upon and take possession of the land covered thereby, irrespective of whether exceptions to said assessment or award shall be filed or not, and the subsequent proceedings shall not interfere with or affect such possession, but shall only affect the amount of compensation to be paid.

SEC. 6. That the construction of the track or siding herein provided for shall be begun within six months from the date of the passage of this act, and shall be completed within two years from said date, and pending such construction the said Philadelphia, Baltimore and Washington Railroad Company is hereby authorized to maintain its present track connection with the United States Navy-Yard by means of a single track on K street and Canal street SE., either as at present located or as the same may hereafter be relocated, in whole or in part, with the approval of the Commissioners of the District of Columbia, but at the expiration of said two years said railroad company shall at its own expense remove said present track connection and restore the surface of the streets over which the same is laid, to the approval of said Commissioners.

SEC. 7. That all acts or parts of acts inconsistent with the provisions hereof be, and the same are hereby, repealed.

SEC. 8. That Congress reserves the right to alter, amend, or repeal this act.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. GALLINGER subsequently said: Mr. President, while I was necessarily absent from the Chamber, Senate bill 3976 was passed by the Senate. I desire to enter a motion to reconsider the vote by which that bill was passed. I will not ask that the motion be acted on now, but simply ask to have it entered.

DURHAM W. STEVENS.

The bill (S. 3528) for the relief of Durham W. Stevens, was considered as in Committee of the Whole. It directs the Secretary of the Treasury to pay to Durham W. Stevens, or his personal representatives, $1,983.06, in full satisfaction of his claim for services as chargé d'affaires ad interim at Tokyo from October 25, 1878, to May 21, 1879.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

SUBPŒNAS FOR WITNESSES IN UNITED STATES COURTS.

The bill (S. 3526) to amend section 876 of the Revised Statutes, was considered as in Committee on the Whole.

The bill was reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause, and insert:

That section 876 of the Revised Statutes of the United States be, and the same is hereby, amended, so as to read as follows:

"SEC. 876. Subpœnas for witnesses who are required to attend a court of the United States in any district may run into any other district: *Provided*, That in civil causes the witnesses living out of the State or Territory in which the court is held do not live at a greater distance than 100 miles from the place of holding the same."

Mr. TELLER. Mr. President, I should like to know who reported the bill.

The VICE-PRESIDENT. The bill was reported by the Senator from Oregon [Mr. FULTON].

Mr. TELLER. I should like to have some explanation of it.

Mr. FULTON. I will say to the Senator that I reported the bill, and if he wishes I will explain it.

Mr. TELLER. I wish the Senator would explain how it changes existing law.

Mr. FULTON. It changes existing law in this respect, Mr. President, that under the existing law a subpœna in a civil cause can not be served upon a party outside of the district where the court is held at which he is to appear if his place of residence is over 100 miles from the place where the court is to be held, even though it be in the same State. This bill proposes to change the existing law, so that a subpœna may be served on him at any place in the State where the court is held without regard to the distance. But if he goes beyond the State, of course, the rule regarding distance still obtains.

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Oregon yield to the Senator from Utah?

Mr. FULTON. Certainly.

Mr. SUTHERLAND. Mr. President, the proposed amendment appears to be the same as the existing law, with the exception of the proviso. The original law, as well as the amendment, reads:

SEC. 876. Subpœnas for witnesses who are required to attend a court of the United States in any district may run into any other district.

But the proviso as it is proposed to be amended inserts the words "State or Territory" in place of "district." My recollection is that it has been held that the courts of the Territories are not United States courts, but legislative courts.

Mr. FULTON. I think the courts in the Territories have jurisdiction.

Mr. SUTHERLAND. Yes; the courts of the Territories created by Congress have jurisdiction over cases in which the United States is a party and, indeed, I think any cases where the district and circuit courts of the United States have jurisdiction——

Mr. FULTON. Yes.

Mr. SUTHERLAND. But they are not United States courts, as I understand.

Mr. FULTON. I think the Senator is correct about that. They are legislative courts. They are not constitutional courts, but it does not seem to me that that would affect the matter. The bill was originally drawn by ex-United States Attorney-General Griggs, but it has been changed somewhat. It had, as I recall, the words in regard to the Territories in the bill. I think the Senator from Utah is correct that there are no constitutional courts in the Territories. That is my recollection of the decision. But I do not think that would affect the matter any. I do not see any objection to leaving it in there.

Mr. HEYBURN. I move to amend the amendment by striking out in line 20, on page 2 the words "or Territory."

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY.

The bill (S. 60) for the relief of the Chicago, Peoria and St. Louis Railway Company, of Illinois, was considered as in Committee of the Whole. It proposes to pay to the Chicago, Peoria and St. Louis Railway Company of Illinois $2,835.45, being the amount of internal-revenue tax on certain high wines erroneously appropriated by the Navy Department at Indian Head.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

JURISDICTION OF CIRCUIT COURTS.

The bill (S. 2695) to amend the act of Congress approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," and the acts amendatory thereof, was considered as in Committee of the Whole.

Mr. HEYBURN. Mr. President, I should like to have some explanation of the bill. I do not know that I have any objection to it, but I want to know what are the provisions of the section in the act of 1875. I have it not before me. The bill was reported by the Senator from Arkansas [Mr. CLARKE]. It is rather far-reaching in its effect. There is no discrimination as to the character of the defendant. A party might be a nominal defendant residing in some obscure part of the State, and suit might be brought against the real defendant, joined with the nominal defendant, and he be compelled to travel the entire length of the State for the purpose of defending the action. I think the bill should be explained.

Mr. TELLER. The Senator who reported the bill is not present.

Mr. HEYBURN. I observe that he is not present.

Mr. TELLER. I suggest that the bill go over.

Mr. HEYBURN. I think it had better go over.

The VICE-PRESIDENT. The bill will go over without prejudice.

ADDITIONAL LAND DISTRICT IN SOUTH DAKOTA.

The bill (S. 4132) creating an additional land district in the State of South Dakota was announced as the next business in order on the Calendar.

Mr. KEAN. Let the bill go over, Mr. President.

Mr. GAMBLE. I trust objection will not be made to the bill. It is a matter of very great importance to that section of the State. There is a large region far removed from land-office facilities, and it is a matter of the highest importance to a large number of people in the northwestern part of the State. It is a short bill and is favorably recommended by the Department.

Mr. KEAN. I ask that the bill go over.

The VICE-PRESIDENT. The bill will go over without prejudice, at the request of the Senator from New Jersey.

WHITE EARTH BANDS OF CHIPPEWA INDIANS IN MINNESOTA.

The bill (S. 4734) to provide for the transfer of a certain fund from "depredations upon public lands" to the credit of the White Earth bands of Chippewa Indians in Minnesota was considered as in Committee of the Whole. It directs the Secretary of the Treasury to transfer to the credit of the White Earth bands of Chippewa Indians in Minnesota the sum of $19,694.48, the proceeds of litigation with the Commonwealth Lumber Company.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

INTERNATIONAL EXPOSITION AT TOKYO, JAPAN.

The bill (S. 4639) to provide for the participation by the United States in an international exposition to be held at Tokyo, Japan, in 1912, was considered as in Committee of the Whole.

The bill had been reported from the Committee on Foreign Relations with amendments.

The first amendment was, in section 1, page 2, after the word "and," in line 6, to strike out "the Secretary of State shall appoint;" and, in line 10, before the word "quarterly," to insert "at least," so as to read:

That the President be, and is hereby, authorized in accepting the invitation of the Imperial Japanese Government for the Government of the United States to participate in the Great National Exposition to be held in Tokyo from April 1 to October 31, 1912, to appoint, by and with the advice and consent of the Senate, a commissioner-general, who shall represent the United States at that exposition, and, under the general direction of the Secretary of State, shall make all needful rules and regulations in reference to contributions from the United States, and control the expenditures incident to and necessary for the proper installation and exhibit thereof, and the President, by and with the advice and consent of the Senate, is authorized to appoint an assistant commissioner-general, who shall assist and act under the direction of the commissioner-general, and shall perform the duties of the commissioner-general in the case of his death, disability, or temporary absence; and a secretary, who shall act as disbursing agent and shall perform such duties as may be assigned to him by the commissioner-general and shall render his accounts at least quarterly to the proper accounting officers of the Treasury.

The amendment was agreed to.

The next amendment was, in section 2, page 3, line 6, before the word "hundred," to strike out "two thousand five" and insert "three thousand six," so as to read:

The commissioners herein provided for shall serve during the entire calendar year 1912, and they shall be paid for such service $3,600 each, which payments shall be in full for all compensation and personal and traveling expenses.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

PHILLIP HAGUE, ADMINISTRATOR.

The bill (S. 2027) for the relief of Phillip Hague, administrator of the estate of Joseph Hague, deceased, was considered as in Committee of the Whole.

The bill had been reported from the Committee on Claims with an amendment, on page 1, line 7, after the words "sum of," to strike out "$13,740.66, for" and insert "$1,742.66, in full of all claims by reason of," so as to make the bill read:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Phillip Hague, administrator of the estate of Joseph Hague, deceased, late of New York City, N. Y., out of any money in the Treasury not otherwise appropriated, the sum of $1,742.66, in full of all claims by reason of loss, pilotage, towage, demurrage, and costs by him expended to estimate repairs of the brigantine *Mary Margaret*, by being run into by the United States transport steamer *Belvidere* in the harbor of Galveston, Tex., on September 19, 1865.

The amendment was agreed to.

Mr. BACON. Is there a report accompanying the bill?

The VICE-PRESIDENT. There is a report accompanying the bill.

Mr. FULTON. The report is an extremely long one.

Mr. BACON. If the Senator can state it in substance it will be better.

Mr. FULTON. There is a good deal more embodied in the report than there should have been, as I observe in looking it over.

The facts in brief in regard to this claim are these: In 1865 the U. S. transport *Belvidere* was at the dock in Galveston and the brig *Mary Margaret* was lying at the same dock. The transport was ordered into quarantine and started to leave the dock. Conflicting orders were given, and instead of moving out properly she backed into the brig, committing damages which a board of survey composed of three officers of the Army found to aggregate $1,500.

The Department was ready to pay that sum, but the owners declined to receive it. So the matter hung along from time to time, and finally the Department held that by reason of the lapse of time it could not pay at all. Then the claimants came to Congress, presenting, as I recall it now, a claim for some $13,000. But the committee in investigating it finally concluded that the evidence was very clear that the damage of $1,500 was a legitimate claim. In addition to that we allowed $241.60 for towing the brig to some place to which she had to go—I do not recall now, but I think to some other wharf or place where she was to be repaired. We thought that was probably an item which should properly be allowed in addition to the $1,500 to cover the damages.

Mr. BACON. The claim, then, has been reduced from thirteen thousand to the amount stated in the bill?

Mr. FULTON. It has been reduced from something over thirteen thousand to $1,741.66.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

UNLAWFUL OCCUPANCY OF THE PUBLIC LANDS.

The bill (S. 3941) to amend section 4 of an act entitled "An act to prevent unlawful occupancy of the public lands," approved February 25, 1885, was considered as in Committee of the Whole. It proposes to amend the section named so as to read as follows:

SEC. 4. That any person violating any of the provisions hereof, whether as owner, part owner, or agent, or who shall aid, abet, counsel, advise, or assist in any violation hereof, shall be deemed guilty of a misdemeanor and fined in a sum not exceeding $1,000 or be imprisoned not exceeding one year, or both, for each offense.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

SALE OF TIMBER ON ALLOTTED INDIAN LAND.

The bill (S. 4548) to provide for the sale of timber on allotted and unallotted Indian land, and for other purposes, was considered as in Committee of the Whole.

The bill had been reported from the Committee on Indian Affairs, with an amendment, on page 2, to strike out lines 5, 6, 7, 8, and 9 in the following words:

Timber on unallotted lands of any reservation may also be sold under such regulations as may be prescribed by the Secretary of the Interior, and the proceeds from such sales shall be used for the benefit of the Indians of the reservation in such manner as the Secretary of the Interior may direct.

The amendment was agreed to.

Mr. TELLER. I move to strike out all after line 9 on page 2 of the bill. This is an unusual and extraordinary proposition and ought not to be enacted into law.

The VICE-PRESIDENT. The Senator from Colorado proposes an amendment which will be stated.

The SECRETARY. It is proposed to strike out all after line 9, on page 2, in the following words:

The Secretary of the Interior shall have authority to call on the Forest Service for assistance in carrying into effect the provisions hereof, and of any regulations he may prescribe hereunder, and also to determine what expenses shall be paid from the proceeds of the sale of the timber, whether on allotted or unallotted land.

Mr. GAMBLE. I reported the bill from the Committee on Indian Affairs. We have no objection to the amendment offered by the Senator from Colorado.

Mr. TELLER. I merely want to say that I think the mixing of the jurisdiction of one Department with another would work badly, and there is no need of it. This is in rather a curious form:

The Secretary of the Interior shall have authority to call on the Forest Service.

Of course the Forest Service is under the Agriculture Department. This is a mixing of authority which I do not think is advisable. I ask that the words be stricken out.

Mr. GAMBLE. I will state that the bill is a Department measure, having been drawn by the Department, and was introduced by the junior Senator from Pennsylvania [Mr. KNOX], and this of course was desired by the Department.

Mr. TELLER. Under certain conditions the Department of the Interior may call upon the Department of Agriculture without any authority of law.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Colorado.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. CARTER. I suggest that the title be amended to conform to the character of the bill as passed. It will be observed that the title reads, "For the sale of timber on allotted and unallotted Indian land."

Mr. CLAPP. Yes; let the title be amended.

Mr. CARTER. The bill has been amended by striking out "unallotted." I therefore move to amend the title by striking out the words "and unallotted."

The title was amended so as to read: "A bill to provide for the sale of timber on allotted Indian land, and for other purposes."

OFFICE OF CAPTAIN IN PHILIPPINE SCOUTS.

The bill (S. 652) to create the office of captain in the Philippine Scouts was announced as the next business in order, and was read.

Mr. BACON. Does the bill come from the Military Affairs Committee or from the Committee on the Philippines?

The VICE-PRESIDENT. The bill was reported from the Committee on Military Affairs.

Mr. BACON. As I understand, this is to create a sort of general office of the grade of captain, which will not be attached to any particular company. Is that the change that is proposed? Of course, we have had organizations of Philippine Scouts in the Philippine Islands for the last eight years. I simply ask for information. I do not know that there is any reasonable objection to that arrangement.

Mr. WARNER. The chairman of the Committee on Military Affairs having the bill in charge is not in the Chamber at present, and I suggest that the bill be passed over without prejudice.

Mr. BACON. Not losing its place.

The VICE-PRESIDENT. The bill will be passed over without prejudice.

SITE OF FORT LEE, PALISADES, NEW JERSEY.

The bill (S. 2669) providing for the acceptance of a donation of certain land situated at the Palisades, in the State of New Jersey, was considered as in Committee of the Whole. It authorizes the Secretary of War to accept on behalf of the United States a donation of certain land situated at the Palisades, in the State of New Jersey, containing about 2¼ acres, which land is known as the site of Fort Lee and was used and occupied as a fortification by the Continental Army in the Revolutionary war.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

REIMBURSEMENT OF PHILIPPINE SCOUTS.

The bill (S. 651) for the reimbursement of certain sums of money to certain enlisted men of the Philippine Scouts was considered as in Committee of the Whole. It proposes to reimburse the enlisted men of the Philippine Scouts for certain sums of money intrusted by them to Lieut. Andrew Shea, Philippine Scouts, for safe-keeping and for transmission to their families in the Philippine Islands, which sums were embezzled by Shea and fraudulently converted to his own use, and appropriates $3,600 for that purpose.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

RAILROAD THROUGH THREE TREE POINT MILITARY RESERVATION.

The bill (S. 626) authorizing and empowering the Secretary of War to locate a right of way for and granting the same and a right to operate and maintain a line of railroad through the Three Tree Point Military Reservation, in the State of Washington, to the Grays Harbor and Columbia River Railway Company, its successors and assigns, was announced as next in order.

Mr. KEAN. I understand that the Senator from Washington [Mr. PILES] desires to be present when this bill is considered.

The VICE-PRESIDENT. The junior Senator from Washington is in the Chamber.

Mr. PILES. I should like to have the bill passed over, retaining its place on the Calendar.

The VICE-PRESIDENT. The bill will be passed over, retaining its place on the Calendar, at the request of the Senator from Washington.

COMPENSATION OF INSPECTORS OF CUSTOMS.

The bill (S. 4066) authorizing the Secretary of the Treasury to increase the compensation of inspectors of customs was considered as in Committee of the Whole.

The bill was reported from the Committee on Commerce with an amendment in line 6, after the word "Boston," to strike out "and Philadelphia" and insert "Philadelphia, and San Francisco," so as to make the bill read:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized to increase the maximum compensation of inspectors of customs not to exceed $6 per diem, at the ports of New York, Chicago, Boston, Philadelphia, and San Francisco and such other ports as he may designate.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

LIFE-SAVING STATION AT HALF MOON BAY, CALIFORNIA.

The bill (S. 2483) to provide for the establishment of a life-saving station at Half Moon Bay, south of Point Montara and near Montara Reef, California, was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

MATERIAL AND EQUIPMENT FOR PANAMA CANAL.

The joint resolution (S. R. 40) to provide for the transportation by sea of material and equipment for use in the construction of the Panama Canal was announced as next in order.

Mr. FRYE. Let the joint resolution be passed over without prejudice.

The VICE-PRESIDENT. The joint resolution will be passed over without prejudice, at the request of the Senator from Maine.

FORT PECK INDIAN RESERVATION LANDS.

The bill (S. 208) for the survey and allotment of lands now embraced within the limits of the Fort Peck Indian Reservation, in the State of Montana, and the sale and disposal of all the surplus lands after allotment was considered as in Committee of the Whole.

The Secretary proceeded to read the bill, and before the reading was concluded——

The VICE-PRESIDENT. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated by the Secretary.

The SECRETARY. A bill (S. 2982) to codify, revise, and amend the penal laws of the United States.

Mr. HEYBURN. Mr. President, I ask unanimous consent that the unfinished business be temporarily laid aside.

The VICE-PRESIDENT. The Senator from Idaho asks unanimous consent that the unfinished business be temporarily laid aside. Is there objection? The Chair hears none, and it is so ordered.

Mr. ALDRICH. Does the Senator from Montana desire to have the pending bill completed?

Mr. DIXON. Yes; the reading is nearly completed.

The VICE-PRESIDENT. The Secretary will continue the reading of the bill.

The Secretary resumed and concluded the reading of the bill.

Mr. BACON. Mr. President, I do not want to delay the bill a moment, but it seems to be one of very large scope. I should like to have some Senator in charge of it give a word of explanation about it, as to the amount of land involved, and so forth.

Mr. DIXON. I will state, in reply to the Senator from Georgia, that this is a bill which opens to allotment to Indians in severalty their lands on the Fort Peck Reservation in Montana, and provides for the sale of the surplus lands. Last summer a special agent of the Indian Department visited these Indians and held a conference with them, and this bill is the result of the agreement made by the inspector with the Indians at that time.

The original bill was prepared in the office of the Commissioner of Indian Affairs, and afterwards referred to the Secretary of the Interior for his report. Sundry amendments proposed by the Secretary's office as to an irrigation scheme were referred back to the Committee on Indian Affairs and adopted. Those are the amendments which are offered to the bill as prepared originally by the Indian Office.

Ninety-five per cent of the male adult Indians signed the agreement. The Commissioner's office is favorable, the Secretary of the Interior has returned a favorable reply, and there is no objection to the measure anywhere along the line.

It embraces an area of country larger than the State of Delaware. There are 1,800,000 acres of land now occupied by less than 2,000 Indians. They are to be allotted land in accordance with their agreement, and the rest of the land will be thrown open to settlement. That is the bill.

Mr. BACON. I was struck by the fact that there seemed to be a very large irrigation programme laid out, and some $200,000, if I caught the reading correctly, are appropriated simply for surveying and the making of plans.

Mr. DIXON. The larger part of the appropriation is to reimburse for sections 16 and 36, which go to the public school fund in accordance with the universal legislation along that line. The appropriation of $100,000 to make the preliminary survey and to commence the work is to be reimbursable to the Government from the sale of the lands. So the Government will not be out one penny. It is to be reimbursed under the terms of the bill.

Mr. BACON. I understand that; I got that from the reading; but the thing that I had some little curiosity about was that the mere matter of plans would cost $100,000. I suppose it involves the surveys.

Mr. DIXON. The surveys and the commencement of the work, and the Treasury is to be reimbursed.

Mr. TELLER. Mr. President, as the Senator from Georgia says, this is an important bill. It is a local bill in many respects, and it deals with the question of the occupation of land by the Indians as well as the occupation of land by certain white people.

The Senator who has the bill in charge, the chairman of the Committee on Indian Affairs, has some amendments which he proposes, amendments which, I think, will improve the bill and will do away with the objection I would otherwise make to the bill. But on page 7 of the bill I find the following in the amendment of the committee:

> A right to the use of water acquired under the provisions of this act shall be appurtenant to the lands irrigated, and beneficial use shall be the basis, the measure, and the limit of the right.

That is not a question that we have anything to do with in Congress. It is purely a question of State regulation, and that clause must go out. Then it will be consistent with all the legislation we have made heretofore except in one case, where the courts in one State have ignored the provision. In the reclamation act there was a provision which said that the waters should be appurtenant. In one State at least the courts have held that that is a question for the State, and they have ignored it. I shall move to strike out lines 8, 9, 10, and 11.

Mr. DIXON. That amendment to the amendment will be agreed to when it is reached. After consultation with the chairman of the Committee on Indian Affairs I will submit an amendment. I will state that most of the amendments are merely to correct misprints in the bill. They were in the original amendment.

The VICE-PRESIDENT. The amendments reported by the Committee on Indian Affairs will be stated in their order.

The first amendment of the Committee on Indian Affairs was, in section 1, page 2, line 3, after the word "such," to insert "lands as may be irrigable therefrom, or necessary for irrigation works, and also," so as to make the section read:

> That the Secretary of the Interior be, and he is hereby, authorized and directed to cause to be surveyed all the lands embraced within the limits of the Fort Peck Indian Reservation, in the State of Montana, and to cause an examination of the lands within such reservation to be made by the Reclamation Service and by experts of the Geological Survey, and if there be found any lands which it may be deemed practicable to bring under an irrigation project, or any lands bearing lignite coal, the Secretary of the Interior is hereby authorized to construct such irrigation projects and reserve such lands as may be irrigable therefrom, or necessary for irrigation works, and also coal lands as may be necessary to the construction and maintenance of any such projects.

The amendment was agreed to.

The next amendment was, in section 2, line 19, before the word "acres," to strike out "40" and insert "20," so as to read:

> SEC. 2. That as soon as all the lands embraced within the said Fort Peck Indian Reservation shall have been surveyed, the Commissioner of Indian Affairs shall cause allotments of the same to be made under the provisions of the allotment laws of the United States to all persons having tribal rights or holding tribal relations, and who may rightfully belong on said reservation; that there shall be allotted to each member 320 acres of grazing lands and an additional allotment of not less than 2½ acres or more than 20 acres of timber land: *Provided*, That should it be determined as feasible, after examination, to irrigate any of said lands, the allotments may be 20 acres of irrigable land and 280 acres of additional land valuable only for grazing purposes, as the allottee may elect; and to pay the costs of the examinations provided for herein and for the construction of irrigation systems to irrigate lands which may be found susceptible of irrigation, there is appropriated $200,000, to be immediately available, the cost of such examination and systems to be reimbursed from the proceeds of sales of the lands within the said reservation.

The amendment was agreed to.

The next amendment was, in section 2, page 3, line 3, after the word "reservation," to strike out the following:

> *Provided further*, That the Indians and settlers on the surplus lands, in the order named, shall have a preference right for one year from the date of the President's proclamation opening the reservation to settlement, to appropriate the waters of the reservation, which shall be filed on and appropriated under the laws of the State of Montana, by the Commissioner of Indian Affairs on behalf of the Indians taking irrigable allotments, and by the settlers under the same law. At the expiration of the one year aforesaid the irrigation systems constructed and to be constructed shall be operated under the laws of the State of Montana, and the title to such systems as may be constructed under this act, until otherwise provided by law, shall be in the Secretary of the Interior in trust for the said Indians, and he may sue and be sued in matters relating thereto: *And provided further*, That the ditches and canals of such irrigation system may be used, extended, or enlarged for the purpose of conveying water to any person, association, or corporation under and upon compliance with the provisions of the laws of the State of Montana: *And provided further*, That when any irrigation system constructed under authority of this act is in successful operation, the cost of operating it shall be equitably apportioned among the lands irrigated, and when the Indians have become self-supporting to the annual charge shall be added an amount sufficient to pay back into the Treasury the cost of the work done in their behalf within thirty years, suitable deductions being made for the amounts received from the disposal of the lands within the reservation aforesaid: *Provided*, That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right.

And to insert the following:

> *Provided, however*, That any land irrigable by any system constructed under the provisions of this section be disposed of subject to the following conditions: The entryman or owner shall, in addition to the payments required by section 8 of this act, be required to pay for a water right the proportionate cost of the construction of said system in not more than fifteen annual installments, as fixed by the Secretary of the Interior, with a view to the return of all moneys expended thereon, the same to be paid at the local land office, and the register and receiver shall be allowed the usual commissions on all moneys paid.
>
> The entryman of lands to be irrigated by said system shall, in addition to compliance with the homestead laws, reclaim at least one-half of the total irrigable area of his entry for agricultural purposes, and before receiving patent for the lands covered by his entry shall pay the charges apportioned against such tract, but the commutation provisions of the homestead laws shall not apply to entries of lands under such irrigation system, nor shall any such lands be subject to mineral entry or location. No right to the use of water shall be disposed of for a tract exceeding 160 acres to any one person, and the Secretary of the Interior may limit the areas to be entered at not less than 40 nor more than 160 acres each.
>
> A failure to make any two payments when due shall render the entry and water-right application subject to cancellation, with the forfeiture of all rights under this act, as well as of any moneys paid thereon. The funds arising hereunder shall be paid into the Treasury of the United States and be added to the proceeds derived from the sale of the lands. No right to the use of water for lands in private

ownership shall be sold to any landowner unless he be an actual bona fide resident on such land or occupant thereof residing in the neighborhood of such land, and no such right shall permanently attach until all payments therefor are made.

All applicants for water rights under the systems constructed in pursuance of this act shall be required to pay such annual charges for operation and maintenance as shall be fixed by the Secretary of the Interior, and the failure to pay such charges when due shall render the water-right application and the entry subject to cancellation, with the forfeiture of all rights under this act as well as of any moneys already paid thereon.

The Secretary of the Interior is hereby authorized to fix the time for the beginning of such payments and to provide such rules and regulations in regard thereto as he may deem proper. Upon the cancellation of any entry or water-right application, as herein provided, such lands or water rights may be disposed of under the terms of this act and at such price and on such conditions as the Secretary of the Interior may determine, but not less than the cost originally fixed.

The land irrigable under the systems herein provided, which is owned by or has been allotted to Indians in severalty, shall be deemed to have a right to so much water as may be required to irrigate such lands without cost to the Indians so long as the title, legal or equitable, remains in said Indians; but any such lands leased for a longer term than three years shall bear their pro rata share of the cost of the operation and maintenance of the system under which it lies, and when the Indian title is extinguished such lands shall also bear their pro rata cost of operation and maintenance.

When the payments required by this act have been made for the major part of the lands irrigable under any system and subject to charges for construction thereof, the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior, subject to the provisions hereof for the furnishing of water rights for the irrigation of Indian lands without cost except as provided for operation and maintenance.

A right to the use of water acquired under the provisions of this act shall be appurtenant to the lands irrigated, and beneficial use shall be the basis, the measure, and the limit of the right.

Mr. DIXON. I move to amend the amendment of the committee by striking out all of line 1 after the word "tract," all of line 2, and all of line 3 to the word "nor," in the following words:

But the commutation provisions of the homestead laws shall not apply to entries of lands under such irrigation system.

The amendment to the amendment was agreed to.

Mr. DIXON. Now let the amendment suggested by the Senator from Colorado be stated.

The SECRETARY. On page 7 in the amendment of the committee strike out lines 8, 9, 10, and 11, in the following words:

A right to the use of water acquired under the provisions of this act shall be appurtenant to the lands irrigated, and beneficial use shall be the basis, the measure, and the limit of the right.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. HEYBURN. Mr. President, I should like to direct the attention of the Senator from Montana to a feature in the amendment just read, which has been forcibly brought to notice as to the same class of settlers recently in our State. I notice that the payment extends in this case over a period of fifteen years. During that time this property will never be taxable or contribute anything to the maintenance of the State government, because the title will remain in the Government of the United States. I have just succeeded in having that difficulty in the State of Idaho adjusted, so that at the end of five years settlers may prove up; but I did not catch in the reading of this bill that there was any option given to the parties to prove up at the end of five years. I would suggest to the Senator from Montana the embarrassment that will arise from having in communities a large quantity of property which can not be taxed for school purposes or for any other purpose.

Mr. DIXON. Mr. President, I will say, in reply to the suggestion of the Senator from Idaho, that to cover that phase of the case there is a provision in this bill that the settlers may commute their homestead entries and receive patents for their lands at the expiration of the commutation period of fourteen months, as now provided by the general land laws.

Mr. HEYBURN. Very well.

The next amendment of the Committee on Indian Affairs was, in section 3, on page 7, line 16, after the word "Indians," to insert:

and the Secretary of the Interior is hereby authorized and directed to reserve and set aside for town-site purposes and to survey, lay out, and plat into town lots, streets, alleys, and parks not less than 40 acres of said land at the present settlement of Poplar, and at such other places as the Secretary of the Interior may deem necessary or convenient for town sites, in such manner as will best subserve the present needs and the reasonable prospective growth of said settlement.

So as to make the section read:

SEC. 3. That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed, and as long as agency, school, or religious institutions are maintained thereon for the benefit of the Indians, and the Secretary of the Interior is hereby authorized and directed to reserve and set aside for town-site purposes and to survey, lay out, and plat into town lots, streets, alleys, and parks not less than 40 acres of said land at the present settlement of Poplar, and at such other places as the Secretary of the Interior may deem necessary or convenient for town sites, in such manner as will best subserve the present needs and the reasonable prospective growth of said settlement.

Mr. DIXON. Mr. President, I would say that that section is covered by a proposed amendment striking out and inserting. It was a mistake made by the printer.

The amendment was agreed to.

The next amendment of the Committee on Indian Affairs was, on page 8, section 4, line 3, before the word "persons," to strike out "three" and insert "five;" in line 6, after the word "follows," to strike out "one commissioner" and insert "two of said commissioners;" in line 7, after the word "be," to strike out "a person" and insert "persons;" in line 9, before the word "resident," to strike out "one" and insert "two;" in the same line, after the word "resident," to strike out "citizen" and insert "citizens;" so as to make the section read:

SEC. 4. That upon the completion of said allotments the President of the United States shall appoint a commission consisting of five persons to inspect, classify, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians or reserved by the Secretary of the Interior, said commission to be constituted as follows: Two of said commissioners shall be persons holding tribal relations with said Indians, one representative of the Indian Bureau, and two resident citizens of the State of Montana.

The amendment was agreed to.

The next amendment was, on page 8, section 5, line 15, before the word "dollars," to strike out "five" and insert "eight," so as to make the section read:

SEC. 5. That within thirty days after their appointment said commissioners shall meet at some point within the Fort Peck Reservation and organize by the election of one of their number as chairman. Said commission is hereby empowered to select a clerk at a salary not to exceed $8 per day.

The amendment was agreed to.

The next amendment was, in section 7, on page 9, line 5, after the word "appraisement," to strike out "of all;" in line 16, after the word "Indians," to insert "or by reservation or withdrawal under the provisions of this act," so as to make the section read:

SEC. 7. That when said commission shall have completed the classification and appraisement of said lands, and the same shall have been approved by the Secretary of the Interior, the lands shall be disposed of under the general provisions of the homestead, desert-land, mineral, and town-site laws of the United States, except sections 16 and 36 of each township, or any part thereof, for which the State of Montana has not heretofore received indemnity lands under existing laws, which sections, or parts thereof, are hereby granted to the State of Montana for school purposes. And in case either of said sections, or parts thereof, is lost to the State by reason of allotment thereof to any Indian or Indians, or by reservation or withdrawal under the provisions of this act or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized to select other unoccupied, unreserved, nonmineral lands within said reservation, not exceeding two sections in any one township, which selections must be made within the sixty days immediately prior to the date fixed by the President's proclamation opening the surplus lands to settlement: *Provided*, That the United States shall pay to the said Indians for the lands in said sections 16 and 36, so granted, or the lands within said reservation selected in lieu thereof, the sum of $1.25 per acre.

The amendment was agreed to.

The next amendment was, on page 11, section 9, line 25, before the word "equal," to strike out "four" and insert "five;" so as to read:

SEC. 9. That entrymen under the desert-land law shall be required to pay one-fifth of the appraised value of the land in cash at the time of entry, and the remainder in five equal annual installments, as provided in homestead entries; but any such entryman shall be required to pay the full appraised value of the land on or before submission of final proof, etc.

The amendment was agreed to.

The next amendment was, on page 12, section 10, line 18, after the word "reservation," to strike out "under" and insert "deemed practicable for;" so as to make the section read:

SEC. 10. That if, after the approval of the classification and appraisement, as provided herein, there shall be found lands within the limits of the reservation deemed practicable for irrigation projects deemed practicable under the provisions of the act of Congress approved June 17, 1902, known as the reclamation act, said lands shall be subject to withdrawal and be disposed of under the provisions of said act, and settlers shall pay, in addition to the cost of construction and maintenance provided therein, the appraised value as provided in this act, to the proper officers, to be covered into the Treasury of the United States to the credit of the Indians.

The amendment was agreed to.

The next amendment was, in section 11, on page 13, line 4, after the words "from the," to strike out "taking effect of this act" and insert "date of President's proclamation to entry;" so as to make the section read:

SEC. 11. That all lands hereby opened to settlement remaining undisposed of at the end of five years from the date of President's proclamation to entry shall be sold to the highest bidder for cash at not less than $1.25 per acre, under regulations to be prescribed by the Secretary of the Interior; and any lands remaining unsold ten years after said lands shall have been opened to entry shall be sold to the highest

bidder for cash, without regard to the minimum limit above stated: *Provided*, That not more than 640 acres shall be sold to any one person or company.

The amendment was agreed to.

The next amendment was, in section 12, on page 13, line 22, after the words "Indians or," to strike out "reserved" and insert "withdrawn;" so as to make the section read:

SEC. 12. That the lands within said reservation however classified, shall, on and after sixty days from the date fixed by the President's proclamation opening said lands, be subject to exploration, location, and purchase under the general provisions of the United States mineral and coal land laws at not less than the price therein fixed and not less than the appraised value of the land, except that no mineral or coal exploration, location, or purchase shall be permitted upon any lands allotted to Indians or withdrawn under the provisions of this act.

The amendment was agreed to.

The next amendment was, in section 14, on page 14, line 10, after the words "SEC. 14," to strike out:

That the Secretary of the Interior is hereby authorized and directed to set apart from said lands, whether surveyed or unsurveyed, such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause any such reservations, or parts thereof, to be surveyed into blocks and lots of suitable size, and to be appraised and disposed of under such regulations as he may prescribe. The net proceeds derived from the sale of such lands shall be deposited in the Treasury of the United States to the credit of the Indians.

And to insert:

That such town sites shall be surveyed, appraised, and disposed of as provided in section 2381 of the United States Revised Statutes: *Provided*, That any person who, at the date when the appraisers commence their work upon the land, shall be an actual resident upon any one such lot and the owner of substantial and permanent improvements thereon, and who shall maintain his or her residence and improvements on such lot to the date of his or her application to enter, shall be entitled to enter, at any time prior to the day fixed for the public sale and at the appraised value thereof, such lot and any one additional lot of which he or she may also be in possession and upon which he or she may have substantial and permanent improvements: *Provided further*, That before making entry of any such lot or lots the applicant shall make proof, to the satisfaction of the register and receiver of the land district in which the land lies, of such residence, possession, and ownership of improvements, under such regulations as to time, notice, manner, and character of proofs as may be prescribed by the Commissioner of the General Land Office, with the approval of the Secretary of the Interior: *Provided further*, That in making their appraisal of the lots so surveyed, it shall be the duty of the appraisers to ascertain the names of the residents upon and occupants of any such lots, the character and extent of the improvements thereon, and the name of the reputed owner thereof, and to report their findings in connection with their report of appraisal, which report of findings shall be taken as prima facie evidence of the facts therein set out. All such lots not so entered prior to the day fixed for the public sale shall be offered at public outcry, in their regular order, with the other unimproved and unoccupied lots. That no lot shall be sold for less than $10: *And provided further*, That said lots when surveyed, shall approximate 50 by 150 feet in size.

The amendment was agreed to.

The next amendment was, in section 15, on page 16, line 21, after the word "shall," to strike out "upon the date of the approval by the Secretary of the Interior of the allotments of land authorized by this act" and insert "within three years after the completion of the irrigation systems to be constructed under the provisions of section 2 hereof," so as to make the section read:

SEC. 15. That after deducting the expenses of the commission of classification, appraisement, and sale of the lands, and such other incidental expenses as may necessarily be incurred, including the cost of survey of said lands, the balance realized from the proceeds of the sale of the lands in conformity with the provisions of this act shall be paid into the Treasury of the United States and placed to the credit of said Indian tribe, to draw 4 per cent per annum, the principal and interest to be expended from time to time by the Secretary of the Interior as he may deem advisable for the benefit of said Indians in their education and civilization, the construction and maintenance of irrigation ditches, should such be determined as feasible and beneficial to said allottees, and suitable per capita cash payments. The remainder of all funds deposited in the Treasury realized from such sale of lands herein authorized, together with the remainder of all other funds now placed to the credit of or that shall hereafter become due to said tribe of Indians, shall, within three years after the completion of the irrigation systems to be constructed under the provisions of section 2 hereof, be allotted in severalty to the members of the tribe, the persons entitled to share as members in such distribution to be determined by the Secretary of the Interior.

The amendment was agreed to.

The next amendment was, in section 16, on page 17, line 5, after the word "appropriated," to insert "in addition to the amount appropriated in section 2," so as to make the section read:

SEC. 16. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, in addition to the amount appropriated in section 2, the sum of $100,000, or so much thereof as may be necessary, to pay for the lands granted to the State of Montana, and for lands reserved for agency and school purposes, at the rate of $1.25 per acre; also the sum of $100,000, or so much thereof as may be necessary, to be immediately available, to enable the Secretary of the Interior to survey, allot, classify, and appraise the lands in said reservation as provided herein, and also to defray the expense of the appraisement and survey of town sites, the latter sums to be reimbursable out of the funds arising from the sale of said lands.

The amendment was agreed to.

Mr. DIXON. I now offer the amendment which I send to the desk.

The VICE-PRESIDENT. The amendment proposed by the Senator from Montana will be stated.

The SECRETARY. In section 2, on page 7, line 11, strike out the period at the end of the committee amendment and insert:

All appropriations of the waters of the reservation shall be made under the provisions of the laws of the State of Montana.

The amendment was agreed to.

Mr. CLAPP. I offer the amendments which I send to the desk.

The VICE-PRESIDENT. The first amendment proposed by the Senator from Minnesota will be stated.

The SECRETARY. On page 7, line 16, after the word "Indians," it is proposed to strike out the committee amendment, as follows:

And the Secretary of the Interior is hereby authorized and directed to reserve and set aside for town-site purposes and to survey, lay out, and plat into town lots, streets, alleys, and parks not less than 40 acres of said land at the present settlement of Poplar, and at such other places as the Secretary of the Interior may deem necessary or convenient for town sites, in such manner as will best subserve the present needs and the reasonable prospective growth of said settlement.

And in lieu thereof to insert:

And also such of said lands adjacent to the right of way of the Great Northern Railway as are necessary for the use of the Great Northern Railway Company in the construction and maintenance of water reservoirs for use by said railway company in the operation of said line of railway; and the Secretary of the Interior is authorized and directed, when surveyed, to issue patents to said Great Northern Railway Company for the said lands embraced within said reservoir sites to the Great Northern Railway Company upon payment by said company of the sum of $2.50 per acre, the money so paid to be deposited in the Treasury of the United States to the credit of said Indians.

The VICE-PRESIDENT. Without objection, the vote by which the committee amendment from line 16 to 25, on page 7, was agreed to will be regarded as reconsidered, and the committee amendment disagreed to. The question now is on the adoption of the amendment submitted by the Senator from Minnesota [Mr. CLAPP], which has been stated.

Mr. CURTIS. I should like to ask the Senator in charge of the bill a question. Do I understand that the measure now pending was drawn in the Department?

Mr. DIXON. Yes.

Mr. CURTIS. Then, how does it come that there are so many amendments proposed to the bill?

Mr. DIXON. I will say to the Senator from Kansas that the bill originally was framed in the Indian Office, after which it was referred to the Secretary of the Interior for his approval. These amendments, principally referring to the system of irrigation which the engineers want to construct there, are amendments suggested by the Office of the Secretary of the Interior to the bill as prepared by the Commissioner of Indian Affairs.

Mr. CURTIS. Has the Senator offered, or have the committee offered, any amendments not approved by the Department?

Mr. DIXON. None whatever, except the amendment relating to station tanks of the Great Northern Railway, which was overlooked when the bill was prepared.

Mr. CURTIS. I notice in that amendment that there is a provision that this land shall be conveyed to the railroad exclusively for the use mentioned in the amendment, which is for water tanks.

Mr. DIXON. That is the purpose of the amendment, I will say to the Senator.

Mr. CURTIS. There is no limit in the right or the use?

Mr. DIXON. I will say to the Senator from Kansas that, at the request of the chairman of the Committee on Indian Affairs, these amendments were accepted by the Committee on Indian Affairs.

Mr. CLAPP. Mr. President, I will say to the Senator from Kansas that probably only an acre or two of land would be embraced. However, I will move to amend the language by inserting after the word "patents" the words "exclusively for the purposes aforesaid."

Mr. CURTIS. That is right.

The VICE-PRESIDENT. Where does the Senator from Minnesota desire to have inserted the amendment which he has proposed?

Mr. CLAPP. After the word "patents" in the amendment.

The VICE-PRESIDENT. The amendment to the amendment will be stated.

The SECRETARY. After the word "patents," in the amendment, it is proposed to insert the words "exclusively for the purposes aforesaid," so as to read:

When surveyed, to issue patents exclusively for the purposes aforesaid to said Great Northern Railway Company for the said lands, etc.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. CLAPP. I offer the amendment which I send to the desk.

The VICE-PRESIDENT. The amendment submitted by the Senator from Minnesota will be stated.

The SECRETARY. In section 14, on page 14, line 10, after the words "SEC. 14," it is proposed to insert:

That the Secretary of the Interior is hereby authorized and directed to reserve and set aside for town-site purposes, and to survey, lay out, and plat into town lots, streets, alleys, and parks, not less than 40 acres of said land at the present settlement of Poplar, and at such other places as the Secretary of the Interior may deem necessary or convenient for town sites, in such manner as will best subserve the present needs and the reasonable prospective growth of said settlement.

The amendment was agreed to.

Mr. TELLER. Mr. President, I desire to call the attention of the Senator in charge of the bill to the language contained in the amendment on page 6, line 10, where it reads:

As the Secretary of the Interior may determine, but not less than the cost originally fixed.

That leaves to the Secretary of the Interior to fix the price at anything above that sum. I move to insert in line 10, after the words "less," the words "nor more," so as to read:

But not less nor more than the cost originally fixed.

Mr. CLAPP. There is no objection on the part of the committee to the amendment.

The VICE-PRESIDENT. The Senator from Colorado [Mr. TELLER] asks unanimous consent that the vote by which the amendment, which he proposes to amend, was agreed to be reconsidered. Without objection, it is so ordered. The Senator from Colorado now proposes an amendment, which will be stated.

The SECRETARY. In section 2, on page 6, line 10, after the words "not less," it is proposed to amend the amendment of the committee by inserting "nor more," so as to read:

Upon the cancellation of any entry or water-right application, as herein provided, such lands or water rights may be disposed of under the terms of this act and at such price and on such conditions as the Secretary of the Interior may determine, but not less nor more than the cost originally fixed.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. BACON. Mr. President, I should like to ask the Senator from Montana a question. I notice in the first section of the bill there is this language:

And if there be found any lands which it may be deemed practicable to bring under an irrigation project, or any lands bearing lignite coal, the Secretary of the Interior is hereby authorized to construct such irrigation projects and reserve such lands as may be irrigable therefrom, or necessary for irrigation works, and also coal lands as may be necessary to the construction and maintenance of any such projects.

The question to my mind—I must confess I am not familiar with the bill; it was impossible to follow the reading very closely, and it has been equally impossible to examine it since on account of its length—the question which occurred to my mind was whether the only reservation of coal lands is to be the reservation such "as may be necessary in the construction and maintenance of any such projects."

Mr. DIXON. Mr. President——

Mr. BACON. For instance, if the Senator will pardon me a moment, if it should be found that there are extensive coal deposits in Montana, is it the design of this bill that these lands shall be disposed of in the same manner as lands in which there are no coal deposits, except so far as they may be requisite, or the proceeds of which, I suppose, may be requisite, for use in the construction and maintenance of irrigation works?

Mr. DIXON. No. I will say to the Senator from Georgia that that section merely provides for this condition of affairs: Some parts of the reservation are underlaid with lignite coal. The Missouri River flows along the southern boundary of the reservation, and there is a vast area of Missouri River bottoms that the reclamation engineers think can only be irrigated by a pumping station. At the city of Williston, N. Dak., just 40 miles east of these lands, they constructed such a pumping station for irrigation last year, and they reserved two sections of lignite coal lands where the engines were situated in order to secure the power to pump the water. The provision giving the Secretary power to reserve such coal lands as may be necessary in the construction and maintenance of such irrigation projects merely gives him the right to reserve such lignite coal lands for use as fuel to make the power for pumping the water. At the Williston, N. Dak., station I think they reserved two sections of lignite lands for that purpose. That is all that is contemplated by that section of the bill.

Mr. BACON. Mr. President, I understand that; I understand, of course, that the purpose of that section is to reserve such of the coal lands as may be needed in the construction and maintenance of irrigation works; but what I desire to know is this: Suppose that, in addition to that, there are large areas in which this coal is to be found, is it the design that they shall be disposed of in the same manner and at the same price as common lands upon which there is no coal?

Mr. DIXON. Oh, no; they are to be disposed of under the general provisions of the public-land laws of the United States. The provision has no reference to coal lands other than those which are to be reserved for pumping purposes.

Mr. BACON. Well, I am not very familiar with the public-land laws of the country. Does the Senator refer to the public-land laws with reference to coal lands?

Mr. DIXON. Yes, sir.

Mr. BACON. The provisions of this bill will put coal lands in this reservation under the same control and restrictions as those which are now provided by law for coal lands situated on other public lands of the United States.

Mr. DIXON. The same as on other public lands of the United States.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

AMENDMENT OF NATIONAL BANKING LAWS.

Mr. ALDRICH. Mr. President, I ask unanimous consent for the present consideration of the bill (S. 3023) to amend the national banking laws.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. ALDRICH. Mr. President, I ask that the formal reading of the bill be dispensed with and that the bill be read for amendment with the purpose of having the formal committee amendments acted upon to-day.

Mr. BAILEY. Mr. President, I suggest—and the suggestion applies more to this side of the Chamber than to the other—that I presume the Senate would be full immediately if it were understood in the committee rooms that this bill was being taken up for amendment, and, if it be agreeable to the Senator from Rhode Island, I suggest that he say that to-morrow he will ask that the bill be taken up for amendment.

Mr. ALDRICH. My present purpose is only to have the formal amendments of the committee agreed to, but no contested amendments, and with the understanding that the bill shall be open to amendment hereafter in every respect.

Mr. BAILEY. And that it will not be necessary now, of course, to offer amendments which individual Senators may desire to offer.

Mr. ALDRICH. Certainly not. My only purpose is to have the formal amendments reported by the committee adopted to-day.

Mr. BAILEY. I have no objection myself, Mr. President, to that course being pursued.

Mr. ALDRICH. I have no purpose——

Mr. BAILEY. I think probably there are none of the committee amendments that will provoke any discussion at all, certainly no serious discussion.

The VICE-PRESIDENT. The Senator from Rhode Island asks unanimous consent that the formal reading of the bill be dispensed with and that the committee amendments be first considered. Is there objection? The Chair hears none, and it is so ordered.

The Secretary proceeded to read the bill, which had been reported by the Committee on Finance with amendments.

The first amendment reported by the Committee on Finance was, on page 1, line 10, after the words "United States," to strike out:

The Comptroller of the Currency, if in his judgment business conditions demand such additional circulation and the condition of the association making the application warrants the issue, may approve such application, and shall determine the time of issue and shall fix the amount, within the limitations hereinafter imposed, of such additional circulating notes to be issued.

And insert:

The Comptroller of the Currency shall transmit immediately the application, with his recommendation, to the Secretary of the Treasury, who shall, if in his judgment business conditions in the locality demand additional circulation, approve the same, and shall determine the time of issue and fix the amount, within the limitations hereinafter imposed, of the additional circulating notes to be issued. In order that the distribution of notes to be issued under the provisions of this act shall be made as equitable as practicable between the various sections of the country, the Secretary of the Treasury shall not approve applications from associations in any State in excess of the amount to which such State would be entitled of the additional notes herein authorized on the basis of the proportion which the unimpaired capital and surplus of the national banking associations in such State bears to the total amount of unimpaired capital and surplus of the national banking associations of the United States: *Provided, however*, That in case the applications from associations in any State shall not be equal to the amount which the associations of such State would be entitled to under this method of distribution, the Secretary

of the Treasury may, in his discretion, to meet an emergency, assign the amount not thus applied for to any applying association or associations in States in the same section of the country.

Mr. BURKETT. Mr. President, I should like to ask the Senator from Rhode Island to explain a matter which, it seems to me, might present a difficulty. I have no doubt that he has had it called to his attention and considered it, but I do not have the information. Near the bottom of page 2 there is a provision for the distribution of this currency to various States in accordance with the amount of the unimpaired capital of the national banking associations of each State, etc., in the proportion it shall bear to the entire unimpaired capital of the national banking associations of the United States. Then comes the following proviso:

Provided, however, That in case the applications from associations in any State shall not be equal to the amount which the associations of such State would be entitled to under this method of distribution, the Secretary of the Treasury may, in his discretion, to meet an emergency, assign the amount not thus applied for to any applying association or associations in States in the same section of the country.

It has occurred to me in reading the bill over that this provision might be a source of trouble in case of a financial flurry. Take, for instance, the last flurry that we had in October. These flurries usually start in some particular section of the country. Ordinarily they start in New York before any financial panic reaches the western part of the country. I think we all know that within five days before the 28th of October last no bank west of the Mississippi River would have thought of making a request for any additional circulation, and yet previous to that time the banks of other sections of the country might have asked for additional circulation. Under the terms of this bill, could not the Secretary of the Treasury have said two or three weeks before the emergency came that, there being no request from certain other States, therefore all might be assigned to some particular State or to a certain section of the country?

It seems to me that that contingency might arise. I do not know that it is a dangerous one. I suppose the committee thought of it.

Mr. ALDRICH. If the Senator from Nebraska will read the concluding words of the section he will see that the States must be in the same section of the country. In other words, Nebraska's quota could not be assigned to New York. Nebraska's quota or some portion of it might be assigned to Iowa if Nebraska did not ask for it. The States must be in the same section of the country. The committee were of the opinion that that was about as definitely as it would be wise to make the distribution. If there was a demand in New York and no demand in New Jersey or in Connecticut, and an emergency existed, the Secretary of the Treasury would have a right to assign some portion of the quota of New Jersey or of Connecticut to New York, but not to Ohio, not to Illinois, and not to Nebraska.

Mr. BURKETT. I had read the last words of the provision, I will say to the Senator. The word "section" is not very definite. I used the very broad illustration, the territory west of the Mississippi. New York, New Jersey, and Delaware might be construed to be a "section." That section might be entitled to a certain proportion of all the additional currency that could be issued in the United States. A panic might start in New York City, and, large as is the proportion of the banking business in New York City, it might need all there was of the quota of that section, and thus deprive other localities.

I do not raise the question, of course, with the idea of offering any amendment, but I wanted to know if the committee has considered it?

Mr. ALDRICH. We gave the matter very careful consideration, and in our opinion it is properly guarded by the language used.

The VICE-PRESIDENT. The question is on agreeing to the amendment reported by the Committee on Finance.

The amendment was agreed to.

The reading of the bill was resumed. The next amendment of the Committee on Finance was on page 3, section 1, line 9, after the words "amount to," to strike out "75 per cent of the market value, as fixed by the Treasurer of the United States, of the bonds so deposited" and insert:

Seventy-five per cent of the market value of any railroad bonds and 90 per cent of the market value of any other bonds so deposited, such market value to be ascertained and determined under the direction of the Secretary of the Treasury.

So as to read:

Whenever after receiving notice of such approval any such association shall deposit with the Treasurer or any assistant treasurer of the United States such of the bonds described in section 2 of this act as shall be approved in character and amount by the Treasurer of the United States and the Secretary of the Treasury, it shall be entitled to receive, upon the order of the Comptroller of the Currency, circulating notes in blank, registered and countersigned as provided by law, equal in amount to 75 per cent of the market value of any railroad bonds and 90 per cent of the market value of any other bonds so deposited, such market value to be ascertained and determined under the direction of the Secretary of the Treasury, such additional circulating notes to be used, held, and treated in the same way as circulating notes of national banking associations heretofore issued and secured by a deposit of United States bonds, and shall be subject to all the provisions of law affecting such notes.

Mr. DOLLIVER. Mr. President, I have had some inquiry as to whether the term "railroad bonds" in this connection includes the bonds of railroads other than steam roads. In our section of the country we have growing up a very interesting system of long-distance interurban electric railroads. There is one which is over 140 miles long. I have received an inquiry from those people whether this provision is intended to include their securities.

Mr. ALDRICH. I will say that the amendment on the fifth page covers the interrogatory of the Senator from Iowa, and we have not reached that. It was my purpose to pass it over this morning, the committee themselves having under consideration an amendment to that particular provision. But this particular clause applies only to the percentages of advances.

Mr. BAILEY. Mr. President, this statement in the RECORD would be apt to mislead some one who was searching for what we are trying to do and who was endeavoring to ascertain our intent from the RECORD. There is no manner of doubt that this bill excludes interurban railroad bonds, and, so far as I am concerned, I want them excluded. Indeed, I want to exclude all railroad bonds. But the Senator from Iowa [Mr. DOLLIVER], who was so efficient in helping to pass the recent amendment to the interstate-commerce law, will recall that the jurisdiction of the Government was limited to those carriers who conduct their business by rail—or partly by rail and partly by water—by steam railroads. I simply put this in the RECORD so that it will not be hereafter supposed by anybody that we did not know what we were doing or that we had done something that we had not intended to do.

Mr. GALLINGER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from New Hampshire?

Mr. BAILEY. Certainly.

Mr. GALLINGER. I am not so sure the Senator from Texas, who is accustomed to be very accurate, is quite accurate in this matter. As I understand, the Interstate Commerce Commission has practically taken jurisdiction of the street railways of the District of Columbia.

Mr. BAILEY. If so, it must be under some law relating to the District of Columbia, over which we exercise exclusive jurisdiction, and not under its general authority.

Mr. GALLINGER. I do not so understand it. I understand that under the rate law, which was passed during the last Congress, the Interstate Commerce Commission has notified these railroad companies that they must comply with certain conditions which they will impose, on the ground that those railroads run beyond the District of Columbia into the adjoining States, and hence they come under the jurisdiction of the Interstate Commerce Commission.

I have been so informed; and if that be so, I think we ought to be extremely careful in the phraseology of this bill, because I think it would be a great misfortune to have the bonds of railroad corporations of that kind included. I have been disposed to agree with the Senator from Texas that we go perhaps a little too far in including the bonds of steam railroads, but we certainly ought to be extremely careful not to let these interurban roads and street railroads, such as there are in the District of Columbia, be included in the bill. I think it is a matter which ought to be inquired into very carefully before the bill is finally passed upon.

Mr. BAILEY. I am sure that Congress never had in contemplation when it passed that act that under it the Interstate Commerce Commission should burden itself with regulating the fares and the practices of the street railroads of this city, or even the street railroads that in many other instances cross State lines; but if it be true that the Interstate Commerce Commission has assumed that jurisdiction, then the next step will be to require the companies to report.

Mr. GALLINGER. Certainly.

Mr. BAILEY. And when they do report they will bring themselves within this provision. It has been some little time since I examined that act as we passed it; but it seems to me the phraseology of it was such as to confine it not only to railroads, but to steam railroads. Still, however, I can easily understand how a body eager for more jurisdiction might insist that they were railroads, the same as those that are operated by steam.

If there has been any such order entered by the Commission, or if the Commission has asserted any such power, then I think probably the committee has not sufficiently guarded this question. As great a convenience as these interurban railroads are, and as welcome as they are to every community, I think they have not yet been tried sufficiently and they have not demonstrated both their earning capacity and their permanent value enough to have their securities accepted as the basis of our currency. Like the Senator from Iowa [Mr. DOLLIVER], I have had some inquiries about it, and at least one of those inquiries came from some gentleman whose efforts to construct and operate such a railway I heartily applaud and sincerely wish success, but I would not be willing to see their securities accepted as a basis for this currency, because if the steam railroads determine to do it they can operate so as to reduce enormously the earning capacity of these interurban roads.

It may be the steam railroads will attempt, as they have done in New England, to buy the interurban roads and operate them for the passenger service and operate the steam roads for the freight service. I am not perfectly sure but that that would be a very successful conclusion for them all to reach. The interurban service for reasonable distances is more comfortable, or at least it is freer from many objections than is steam railroad travel, and where the two systems serve the same territory I am not perfectly certain that in time it will not go to the point that one will be used entirely for the passenger travel and the other for the freight traffic; and that will come about whether the railroads undertake to buy the other roads or not.

My own opinion is that the steam railroads ought not to be permitted to buy the electric roads, because they are plainly parallel and competing so far as the passenger traffic is concerned. If it shall happen, as it probably will, that the electric railroads become the main arteries of travel for people who want to go short distances, then in time probably their securities will be as well established in the market as the securities of steam railroads are now, but until that time does come surely we ought not to make a provision of doubtful wisdom still more doubtful by adding to the general description of railroad bonds the bonds of these new and, as we must all concede, yet experimental enterprises known as trolley railroads.

Mr. RAYNER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Maryland?

Mr. BAILEY. Certainly.

Mr. RAYNER. I do not desire to interrupt the Senator from Texas, but there are several decisions in the States holding that the word "railroads" includes the electric railways in the State, without specifically naming them.

Mr. BAILEY. I am aware there are decisions of that kind, but I think that with the lawmaker, as with the average man when he talks about railroads, he does not have in contemplation either street railroads or trolley railroads.

Mr. RAYNER. I want to say to the Senator from Texas that I entirely agree with him. I am opposed to putting in railroad bonds at all.

Mr. BAILEY. I am glad to know we have the concurrence of the Senator from Maryland on that point. The other side are going to put them in this bill.

Mr. RAYNER. I understand that.

Mr. BAILEY. Those who have the majority and the power that the majority gives are going to put them in, and if they are going in the bill I want them guarded as much as possible.

I do not expect this bill to be as good as it would be if we on this side could make it, but I am anxious to make it as good as it is possible to be made by the majority on the other side. I think the proceedings of the committee will show that the Democrats on the committee made no factious opposition. They sought no delay. They were ready to proceed. If they could not make the bill as good as it ought to be—and that could not be expected, as we were in the minority—our purpose was to make it as good as possible, so that if at last we could not vote for it—and that of course has to be settled by each man for himself, because it is not a party question and ought not to be made a party question—we should have helped to the best of our ability to improve it. What we could not get out we sought to improve. Not being able to get the railroad-bond provision out of it, I want to make it as safe as possible.

While I am on my feet and on that subject I venture to express the belief that this railroad-bond provision is too narrow if a provision for railroad bonds is to be made in the bill. If you want merely security, and if you are going to ignore the objection which most of us feel to basing our currency upon the bonds of these quasi-public corporations; if you reject that principle and provide for it, then all you want is ample security, security of tested and demonstrated value.

Now, there are millions of railroad bonds in this country which are not only good security, but good enough for the most prudent business man and those charged with the management of estates to invest their trust funds in, which would be excluded by the narrow provisions of this bill; and without suggesting and without intending to suggest that there was any sectional consideration, because I do not believe that influenced a single member of the committee, yet it is true that under the provisions of this bill there are but two railroads that traverse the South and serve the Southern people whose securities could be accepted—the Louisville and Nashville Railroad and the Illinois Central, the latter not being in its full sense a southern property, beginning as it does in the city of Chicago, chartered as it was by the great State of Illinois, and serving other sections besides our own. But so far as I have been able to examine it and to ascertain the facts up to this time the Illinois Central and the Louisville and Nashville railroads are the only two southern roads whose bonds could be accepted under this provision. I sincerely hope that the chairman of the committee and the majority of the committee, if they intend to allow railroad bonds to be used at all, will consent to an amendment that will at least permit the transportation companies of our southern and southwestern country to share whatever benefits may be derived from a provision of that kind.

But, Mr. President, I did not take the floor to discuss that question. I took the floor merely to answer as best I could the inquiry of the Senator from Iowa [Mr. DOLLIVER] and to express the hope that if there is any doubt about the acceptance of trolley-line railroad bonds in this bill, that doubt will be entirely removed.

Mr. ALDRICH. Mr. President, the provision describing railroad securities to be accepted under the provisions of this act is found on the fifth page of the bill, and I stated when I reported the bill to the Senate that the committee had under consideration modifications of that section. At the suggestion of the Senator from Virginia and the Senator from Texas, as the Senator from Texas will remember, that matter was passed over with the understanding that we would, in committee, take up the question of the final description of railroad bonds to be received, and that later we would report such an amended provision for the consideration of the Senate.

I intended, when these provisions on the fifth page were reached, to ask that they be passed over, with the understanding that the committee would at a subsequent day, before the bill passed from the consideration of the Senate, propose certain amendments. The amendment now under consideration simply provides as to the percentage to be advanced on the different classes of securities.

Mr. CULBERSON. Mr. President, I should like to ask the Senator from Rhode Island a practical question with reference to the amendment on page 3, to which attention is being invited. Lines 11, 12, 13, 14, and 15 read as follows:

> Seventy-five per cent of the market value of any railroad bonds and 90 per cent of the market value of any other bonds so deposited, such market value to be ascertained and determined under the direction of the Secretary of the Treasury.

What I desire to know from the Senator in charge of the bill is, as a practical question, how the Secretary of the Treasury will arrive, or is supposed to arrive, at this market value? Will he take the valuation upon the stock exchange, or how will it be determined? I should like to have a practical idea how, in the opinion of the chairman, the Secretary of the Treasury will arrive at this market value.

Mr. ALDRICH. I take it for granted the Secretary of the Treasury will use all the available means at his command to ascertain the market value. For instance, take the first mortgage bonds of the Union Pacific Railroad. They are quoted every day and many times a day on all the great exchanges of the country. The market value is easily ascertainable for almost all the railroad bonds that are for sale, especially of the classes which we have indicated in this bill. I think there is no practical difficulty in the Secretary ascertaining the value.

Mr. BURKETT. Mr. President, I should like to call attention to one point in connection with this matter. I am not so much disturbed about how the Secretary of the Treasury will ascertain the market value of the bonds as I am about another proposition. It seems to me we are establishing in these lines a new basis. If I understand it properly, heretofore the par value has always been taken; and in these lines we base the issue upon the market value. I understand, of course, that on bonds other than Government bonds you can not rely so surely on the par value always as regulating the amount of circulating notes that can be safely issued. But it does occur to me, as I read the provision, that there ought to be added to those three lines somewhere a limitation that in no event shall the issue

be greater than 75 per cent or 90 per cent, as the case may be, of the par value of the bonds.

I take it these bonds come within the clause on the next page—State, city, town, county, municipality, district, and so forth. Now, suppose one of those bonds had a market value of 120. Ninety per cent would be 10 per cent off. The bank could issue notes against those bonds to the extent of 108. We would be in rather an anomalous condition, it seems to me, having guaranteed the payment of currency to the amount of 108, if those bonds should happen to come due in our hands with a par value of only 100.

While we may have to take the market value as the basis on which to issue circulation, it ought never to be issued, in excess of whatever limit we apply, on the par value. While I have not an amendment prepared now, I think before the bill is disposed of—I understand it will be open to amendment—I think there should be an amendment of the character I have indicated, and if I can draw one to suit me I think I will offer an amendment to that section.

Mr. LA FOLLETTE. Mr. President, I ask leave to have printed in the RECORD, for information, an amendment which I will later offer to the pending bill.

Mr. ALDRICH, Mr. SCOTT, AND OTHERS. Let it be read.

The VICE-PRESIDENT. The Senator from Rhode Island asks that the amendment proposed by the Senator from Wisconsin be read. The Secretary will read, as requested.

The SECRETARY. After the word "act," in line 25, on page 5, it is proposed to insert the following:

Provided, That no mortgage bonds of any railroad company shall be accepted as security for any circulating notes provided for in this act unless the fair value and cost of reproduction of the physical property of such railroad shall have been previously ascertained by the Interstate Commerce Commission and certified to the Secretary of the Treasury as hereinafter provided; *And provided further*, That the Interstate Commerce Commission shall investigate and ascertain the fair value and cost of reproduction of the physical property used for the convenience of the public of every railroad engaged in interstate commerce as defined in section 1 of the act entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June 29, 1906. For the purpose of such an investigation the Interstate Commerce Commission is authorized to employ such engineers, experts, and other assistants as may be necessary. Such investigation shall be commenced not later than June 1, 1908, and shall be prosecuted with diligence and thoroughness and the results thereof reported to Congress at the beginning of each regular session. Such valuation shall show the value of the property of every railroad as a whole and the value of its property in each of the several States or Territories or the District of Columbia. Every such railroad shall furnish to the Commission from time to time, and as the Commission may require, maps, profiles, contracts, reports of engineers, and other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said railroad, and every such railroad is required to cooperate with the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may direct. The Commission shall thereafter in like manner keep itself informed of all extensions and improvements or other changes in the conditions of the property of said railroads and ascertain the fair value thereof and from time to time, as may be required for the regulation of railways and their rates and services, under the provisions of the act entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June 29, 1906, or for the purpose of determining the value of any railroad bonds as security for circulating notes provided for by this act, revise and correct its valuation of railway property. To enable the Commission to make such changes and corrections in its valuation, every railroad engaged in interstate commerce, as defined in section 1 of the act entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June 29, 1906, is required to report currently to the Commission and as the Commission may require all improvements and changes in its property and to file with the Commission copies of all contracts for such improvements at the time the same are executed.

Whenever the Commission shall have completed the valuation of the property of any railroad, and before said valuation shall become final, the Commission shall give notice by registered letter to the company or companies owning or operating said railroad, stating the valuation placed upon the several lines of road and classes of property of said company used by it for the convenience of the public, and shall allow the company or companies twenty days in which to file a protest of the same to the Commission. If no protest is filed within twenty days, said valuation shall become final.

If notice of contest is filed by any railroad, the Commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto presented by such railroad in support of its protest so filed as aforesaid. If after hearing any contest of such valuation under the provisions of this act the Commission is of the opinion that its valuation is incorrect, it shall make such changes as shall make the same a fair valuation of such physical property, and shall issue an order making such corrected valuation final. All final valuations by the Commission shall be prima facie evidence of the fair value of the railroad property in all proceedings under this act and under the act entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June 29, 1906. Upon a written request therefor, the Commission shall certify to the Secretary of the Treasury its final valuation of any railroad when the same shall have been determined.

Mr. LA FOLLETTE. The amendment having been read at the desk, it will of course be printed in the RECORD, not as offered at this time, but printed.

In the same way I submit another amendment and ask that it be read. It is a necessary amendment with the one first offered.

The VICE-PRESIDENT. In the absence of objection the Secretary will read the amendment.

The SECRETARY. In lines 11 and 12, page 3, strike out the words "seventy-five per cent of the market value of any railroad bonds" and insert in lieu thereof the following:

Seventy-five per cent of the par value of any railroad bonds, but not more than 75 per cent of the value of the physical property upon which such bonds are secured, such value to be ascertained and determined by the Interstate Commerce Commission.

Mr. MCLAURIN. I was about to make the suggestion a few minutes ago which was made by the Senator from Nebraska [Mr. BURKETT] with reference to the par value of these bonds, or rather I was about to make the inquiry of the Senator from Rhode Island in charge of the bill whether under this valuation more than 75 per cent of the par value of the railroads could be issued, or more than 90 per cent of the par value of State and municipal bonds, etc. The fact is, I started to interrupt the Senator from Rhode Island while he was on the floor to ask him whether in his judgment this could be done.

I wish to ask another question while I am on the floor, and that is whether under the rules of the Senate an amendment to an amendment of the committee can now be offered?

The VICE-PRESIDENT. It is in order.

Mr. MCLAURIN. Then I offer this amendment——

Mr. ALDRICH. If the Senator will pardon me for a moment, it was my purpose to have these formal amendments of the committee first acted upon and then have the bill printed as amended with the understanding, by unanimous consent, that amendments could be offered to the text of the bill as amended as though it were the original text of the bill, so that amendments can come into any portion of the bill at any time. I think that is probably the method which would be most convenient for Senators, it being my purpose that amendments of any character shall be offered to any provision of the bill at any time.

Mr. MCLAURIN. I do not wish to obstruct the mode of procedure that has been mapped out by the Senator in charge of the bill with reference to the amendments of the committee, but I will call the Senator's attention to the amendment I was about to offer. On the suggestion made by the Senator, I will withhold the amendment at this time, with the understanding, if that is the rule of the Senate, that afterwards an amendment to this amendment——

Mr. ALDRICH. Will be in order.

Mr. MCLAURIN. Will be in order.

The VICE-PRESIDENT. The Chair so understands.

Mr. MCLAURIN. This is the amendment——

The VICE-PRESIDENT. The Chair would state that the Senator may offer his amendment and have it printed and it will lie on the table to be offered to the bill at the proper time.

Mr. MCLAURIN. On the suggestion of the President I will pursue that course. I should like, though, to read the amendment I have. It is to insert after the word "Treasury," in line 15, the following, to wit:

Such valuation not to be in any event more than the par value of such bonds.

The VICE-PRESIDENT. The proposed amendment will be printed and lie on the table.

Mr. DANIEL. Mr. President, I desire to give notice of an amendment, on page 5, after the word "earnings," in line 9, to strike out the words:

And which has paid dividends of not less than 4 per cent per annum regularly and continuously on its entire capital stock for a period of not less than five years previous to the deposit of the bonds.

And to insert instead thereof:

And which has paid regularly and continuously for five years next preceding the deposit of its bonds the interest due on all its bonds.

I will state briefly the object of this amendment. It will be seen that the text of the bill requires that bonds offered as security for the currency to be issued shall be of a railroad which regularly and continuously paid on its entire capital stock for a period of not less than five years previous to the deposit of its bonds not less than 4 per cent. In issuing the currency it is not necessary nor may it be wise to look to what they pay on stock. The question is as to the validity and value of the bonds. I think it would be sufficiently secured, if we are to have railroad bonds as a basis of currency, by the assurance of its having paid the interest on its bonds for a period of five years.

I will further explain the amendment when it comes up, if necessary.

Mr. ALDRICH. It was impossible for me to hear the amendment suggested by the Senator from Virginia, and I will ask that it may be read at the desk.

The VICE-PRESIDENT. The Secretary will read the amendment to be proposed by the Senator from Virginia.

The SECRETARY. On page 5, line 9——

Mr. ALDRICH. That has not yet been reached, I will say, but I should like to have the amendment read for the information of the Senate.

Mr. DANIEL. I will state the amendment. It requires bonds of a railroad "which has paid regularly and continuously for five years next preceding the deposit of its bonds the interest due on all its bonds," having no regard to whether it has paid interest on stock or not.

Mr. ALDRICH. I would suggest to the Senator from Virginia, if it suits his pleasure, that that amendment be referred to the Committee on Finance, that it may take it into consideration in connection with the other amendments to the clause.

Mr. DANIEL. Mr. President, I will ask that it be referred to the Committee on Finance.

The VICE-PRESIDENT. The amendment to be proposed by the Senator from Virginia will be printed and referred to the Committee on Finance.

Mr. McCUMBER. I should like to ask the Senator in charge of the bill why the words "market value" are used instead of the words "actual value." I can see a good reason, to my mind, why we should use the words "actual value" instead of "market value." The market value may change materially from one month to another. The market value of all these securities has changed very materially in the last two or three months. The word "actual" has a meaning which gives greater stability to the matter of the value rather than the words "the market value" of the securities.

Mr. President, I can see one very strong reason against the use of the words "market value." We will take the bonds of any one of the greater railways which have paid, we will say, a net income of $6,000,000 annually upon $100,000,000 of bonds. Everyone would agree that those bonds were worth their face value. Under manipulation or under great pressure it might be possible that they would be raised above their par value. Then, if the bonds became due, as many of them might become due, in periods of great prosperity, such as we have had in the last two or three years, on the supposition that prosperous conditions would continue indefinitely as they had been continuing, they would bond the same property for $150,000,000 or $175,000,000. The great amount of property interest that is back of those valuations might hold them up for a time, at least until the bonds were disposed of, so that bonds representing only $100,000,000 or $125,000,000 of actual property might be sold for par or even above par, when $150,000,000 or $175,000,000 of bonds were issued upon the same property.

It seems to me that the word "actual" there would answer every possible purpose. It would give the Secretary of the Treasury the right to determine not what the bonds were sold for from day to day, but to go back over a period of years and see what interest those bonds paid and what the railway paid over and above the interest of its bonds in dividends upon the stock.

That is the only true basis of value. The value of any property is what that property will bring in as an income over a large number of years, and not what it may be sold for to-day under one condition and sold for to-morrow under another condition.

It seems to me that the Secretary of the Treasury should not only have that privilege, but it ought to be his duty to investigate carefully what those bonds are earning year in and year out for a definite number of years, rather than what they may be sold for to-day or to-morrow.

Mr. BURKETT. I should like to ask the Senator a question right on that point.

The VICE-PRESIDENT. Does the Senator from North Dakota yield to the Senator from Nebraska?

Mr. McCUMBER. Certainly.

Mr. BURKETT. I ask the Senator if he does not think that what a thing, whether farm lands or bonds of railroads, or horses, brings in the open market in the rough and ready contest between men who are dealing in that sort of property is about as good barometer of what the actual value of that thing as you can express in the English language?

you can express it in the English language?

Mr. McCUMBER. My own observation and my own experience are exactly the opposite of that. I will take the farm lands of the country to-day, for instance. In my section of the country they have increased from three times to five times their value in the last six or seven years. Now, that same farm property as an income producer produces no more to-day than it did five or six years ago upon one-third of the value.

Under the great wealth that has been secured in the past few years, under the methods of speculation in these most prosperous times, our farm lands have run up at least 50 to 60 per cent more than the real values, and the result is that at the present valuations of farm lands in all the northwestern part of the country they could not possibly pay an income upon the investment.

If, instead of that, we were to determine the valuation of the farm not by what it sold for, but by the net income from it for the last fifteen years, we would then have a proper basis of valuation, and the one true basis of valuation, in my opinion.

I assume, Mr. President, that money in this country on the average is worth about 6 per cent. An industrial plant, therefore, that has paid $6,000 net for eight or ten years may be safely said to be worth $100,000. If it has paid only 6 per cent and there are bonds against it to $150,000, though those bonds to-day or to-morrow or for the last two or three years sell at par, they are not worth par as an investment-bearing income.

As I said before, I think the only proper way to arrive at the value of any property is to determine what income it will bring, not only in good times but under poor conditions in the country.

Mr. BURKETT. I will ask the Senator, then, if in his State loan companies make loans on the actual value he speaks about, or do they make them in proportion to what the land is worth to-day in the market?

Mr. McCUMBER. I did not care about going into the question of land matters over the United States under the great advance in valuations. I will say to the Senator, however, that in the case of most of the farm lands in the country that have been sold from two to three times above their old values mortgages have been given back. It has not represented always cash; sometimes partial cash, and sometimes a mortgage for the balance. I know they will not pay a good income upon the mortgages that are now against them, based upon these excessive values.

Mr. BURKETT. I did not mean to say anything on this point, because what I said a moment ago, when I made the remarks on what the percentage should be based upon, has always occurred to me as the proper rule—that is, it should not be in excess of the par value. I think, perhaps, I expressed my ideas then. I have never perceived that there is so much difference between the actual value and the market value as the Senator has just indicated. It seems to me, as I said, that the best barometer of the actual value of a thing is what it will bring in the open market, where the man who has the money to invest figures it up from every economical standpoint and sets its value on it. The very land that the Senator speaks of in his State as having trebled in value is to-day being valued for sale, and for loan, and for obligation of every sort, not upon the hypothetical basis he suggests of actual values, but upon the real market value. As I said in the question I put to him, it seems to me that the words "market value" are about the best index of what the value of a thing is that you can get words in the English language to express.

Mr. McLAURIN. Mr. President, I wish to state what is, I think, the trouble about the issuance of notes to banks on railroad bonds. The market value and the real value, the actual value of property, are the same. The value of property is what it will bring in the market. There is a distinction between the worth of anything and its value, but there is no distinction between the actual value and the market value.

Now, the trouble with these railroad bonds and the issuance of notes to banks or to anybody else on railroad bonds is that their market value may be one thing one day and another thing another day, and their market value may be a great deal in excess of the actual worth, and the Government may thereby lose; or, as the Senator from Rhode Island said yesterday in presenting the bill, the Government could not lose, because it would have a lien upon all the assets of the bank. Then the depositors would have to lose, because their deposits would be a part of the assets of the bank and would go to make up the amount that the Government is to obtain after exhausting these securities.

Mr. ALDRICH. Will the Senator from Mississippi permit me?

Mr. McLAURIN. Certainly.

Mr. ALDRICH. I call the attention of the Senator from Mississippi to the provisions in lines 16, 17, and 18, on page 5:

May with such approval at any time require the deposit of additional securities, or require any association to change the character of the securities already on deposit.

That was intended to cover the precise case he is talking about. So if there was variation in the price of these securities the Secretary might require an additional deposit or a change of securities, if he so desired.

Mr. McLAURIN. I had read that provision, Mr. President.

Mr. ALDRICH. I would say to the Senator from Mississippi that in my observation there never was any such change as he suggested in first-class securities, such as are called for by the bill.

Mr. McLAURIN. But the Senator recognizes the fact that there is a difference between the value and the worth of property.

Mr. ALDRICH. That depends. It depends upon what kind of property or bonds is under consideration.

Mr. McLAURIN. There may be a difference?

Mr. ALDRICH. Yes; there might be a difference, possibly owing to panic conditions or otherwise, but there is no difference that I can ascertain, in my judgment, between the actual value and the market value of bonds of this character.

Mr. McLAURIN. I do not myself see any difference between the actual value and the market value of bonds, but I can see a very great difference between the actual and market value, which I conceive to be identical, and the actual worth of the bonds.

Mr. ALDRICH. The actual worth of the bonds would depend, I imagine, upon the interest of the party who was deciding that question. The owner of the property would say that the bonds were worth a much larger sum perhaps than the Senator from Mississippi would say, judging from the small surroundings of the bonds, the income, etc. There might be a wide difference of opinion about the worth of the bonds between the Senator from Mississippi and myself, for instance.

Mr. McLAURIN. I should say that the worth of a bond would depend a great deal upon the amount of the railroad property back of the bonds.

Mr. BAILEY. Mr. President, I think the Senator from Mississippi [Mr. McLAURIN] is entirely right in contending that in no event should the bank be permitted to issue currency beyond the 75 per cent of the par value of the railroad bonds.

Mr. ALDRICH. That is not the suggestion of the Senator from Mississippi, as I understood the Senator.

Mr. BAILEY. It is the Senator's amendment.

Mr. ALDRICH. As I understood the Senator's amendment, I shall not object to it. I think it a very proper amendment. It is not, however, I think, just what the Senator from Texas thinks it was.

Mr. BAILEY. I examined it, and the purpose of it, as I read it, is that in no event shall a bank be permitted to issue currency beyond 75 per cent of the par value.

Mr. ALDRICH. No; I think not.

Mr. BAILEY. And if they should fall below the par value, then they must keep it up to 75 per cent of the market value. I will read to the Senator from Rhode Island from a very carefully prepared proposition on this very subject, which would have covered the very case. I say "carefully prepared," of course, in a jocular way, because it is one I prepared myself; but I sought to require that they should always keep the cash value up to 90 per cent and in no case exceed 90 per cent of the par value. I phrased it this way:

Provided, That in no case shall the deposits made under this act exceed 90 per cent of the par value of said securities: *And provided further*, That the cash value of said securities shall at all times exceed the amount deposited by 10 per cent.

That operated both ways. If the securities should be worth 125, they could still only deposit 90 per cent. This substitute of mine deals only with the municipal and State securities, and they could still issue only 80 per cent of the par value; but if after they were deposited or before they were deposited, they should depreciate to 90 per cent of their par value, then they could use them only to the extent of 90 per cent of their cash value. In other words, they might go as high as they pleased, the Government would only treat them as worth 100 cents on the dollar; but if they should diminish in their value, then the Government would recognize the action of the market and conform to it, and require the banks to keep on deposit at least securities of a cash value of 10 per cent above the amount deposited by the Government.

Of course, this bill providing for the issue of money by the banks, instead of the deposit of money by the Government, would be subject to the same limitation. I had no doubt the Senator from Rhode Island would accept the amendment of the Senator from Mississippi, and I think he will find, upon examining the Senator's amendment, that it was intended to do precisely what I suggest, to prevent more than the par value under any circumstance and to preserve the cash value when that is below the par value.

Mr. FLINT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from California?

Mr. BAILEY. Certainly.

Mr. FLINT. I should like to ask the Senator from Texas this question: If he makes it mandatory upon the Secretary of the Treasury at all times to have bonds of such value as he has stated, would not the result be that in the time of a panic, when the bank was short of funds, it would be required to go out and buy additional bonds to make its circulation good?

Mr. BAILEY. Mr. President, that might be a hardship on the bank, but we were not drafting this bill for the benefit of the banks. If the bank gets from the Government the currency which under this bill it might get, or the deposits which it might get under the substitute, and if the securities it deposited in either event, to secure the notes in one and the deposits in the other, should depreciate, surely the Senator from California would not regard it as a hardship on the banks to ask them to make their collateral good? The bank would demand that of the Senator from California; the bank would demand that of any customer whose note it might hold; indeed, the usual form of the note which we all have to sign when we borrow money from a bank is that they can call for additional security whenever they please, and, if we do not answer their call, they can sell our collateral—some of them without notice, and all of them upon proper notice. Surely the Senator from California can not consider it a hardship to apply the same rule to the bank that the bank applies to all its customers.

Mr. FLINT. I would answer the Senator from Texas by stating that back of the bonds is the bank itself. If at the time money is sought for, at the time when the bank is struggling to pay its depositors, it is required to go out and buy additional securities to make its circulation good, the very purpose of the act would be destroyed. As I understand, the purpose of this bill is, to a certain extent, to help the banks as well as the people, but if we provide such a drastic measure the effect will be whenever additional circulation is needed that the banks will have to go out and get additional securities to make good their circulation, and will only receive 75 or 90 per cent of the value of the securities in currency, and instead of being a benefit it would be a great injury.

Mr. BAILEY. Mr. President, it is sincerely to be hoped, and it is certain that if the expectation of those who framed this legislation is realized, there will be no serious decline in the value of securities or other kinds of property when the power of this act is once invoked; in other words, when you begin to supply the country with $500,000,000 of fresh money to take the place of the money which has been hoarded, you at once arrest the tendency to further lack of confidence, and I think it reasonably certain the lowest value of these securities will have been reached before they are used.

Of course, I recognize that there may come an unprecedented catastrophe in which $500,000,000 of new money would not be sufficient, and I am frank to say that, if I had the power, I would make the amount a thousand million dollars instead of $500,000,000. None of it would be used until the requirements of the country became imperative, because no bank could pay 6 per cent until the emergency arose.

Mr. CLAY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Georgia?

Mr. BAILEY. Certainly.

Mr. CLAY. With the Senator's permission, I wish to call his attention to one fact in regard to this bill. Under our national banking laws now, as I understand, national banking associations are authorized to issue circulation to an amount equal to the par value of the United States bonds deposited by them. They can issue circulation to an amount equal to 25, 40, 50, or 100 per cent of the value of their capital. The national banking laws as they exist to-day leave largely to the discretion of the national banking associations the amount of national-bank notes that shall be placed in circulation. I have always thought that that was a mistake. I believe that we ought to have required circulation equal to their capital stock.

Take the bill of the majority of the committee. It does not go even as far as the national banking laws at the present time go. Under the provisions of this bill, as reported by the majority of the committee, the national banking associations which are now in existence, or that may be organized hereafter, can, if they desire to do so, issue this $500,000,000 currency, half that

amount, a fourth of it, or none of it. In other words, we leave it entirely to the discretion of the national banking associations of the country to say whether or not any of these notes shall be issued. I ask the Senator from Texas, Are we not leaving entirely to the national banking associations of this country how much paper money shall be in circulation, how many national-bank notes shall be issued and placed in circulation as money, and is it not a very dangerous discretionary power to exist anywhere except with the Government?

Mr. BAILEY. Mr. President, the Senator from Georgia and myself are in thorough agreement on that question, and in the substitute which I have drawn and which at the proper time I shall offer I have not left it to the discretion of the banks whether the necessary currency shall be issued. My substitute commands the Secretary of the Treasury to deposit it with the banks. Of course it may be said that they can not be compelled to receive the deposit and give the security, but I answer that, if they refuse, they would be forever deprived of their privilege of acting as depositaries of public funds.

The Senator from Georgia has stated correctly that, under the law at present, the national banks may issue circulation equal to 25 per cent of their paid-up capital stock, or may issue notes equal to 100 per cent of their paid-up capital stock; but, as a matter of fact, the banks have only issued upon an average about 60 per cent of the amount which they could issue. The reason they have not done so, in my judgment, is the high price of the bonds. There are probably outstanding now in United States bonds a few thousand dollars less than the total capitalization of the national banks, and therefore the national banks could not under the law issue the full $901,000,000 which they would have been entitled to issue on the 3d day of December, that, as I now recall, being the full amount of their capital stock.

Mr. TALIAFERRO. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Florida?

Mr. BAILEY. I do.

Mr. TALIAFERRO. Mr. President, I should like to ask the Senator from Texas if it is not a fact that there is an abundance of United States bonds to justify Congress in requiring the banks to issue 50 per cent of their capital stock in currency, or to provide that no national bank shall avail itself of the provisions of this act which has not issued 50 per cent of its capital stock in currency, and thereby shown its good faith in trying to supply the need of the country for money?

Mr. BAILEY. Mr. President, I think undoubtedly that is true, and I believe this bill requires that they shall have taken out not less than 50 per cent. I know there was some discussion at one time in the committee on the proposition to require them to take out even more than that, and it was the Senator from Florida who insisted upon that course.

Mr. President, I now call attention to the fact that there is an insufficient supply of United States bonds to enable the banks to issue all the currency which under the law they might issue for the purpose of emphasizing my belief that Congress must finally establish a currency system not based upon the public debt of the United States. I belong to that old school who do not believe that a public debt is a public blessing. I belong to that older and, as I believe, wiser school, that believes that it is the duty of a government, as it is of an individual, to discharge its interest-bearing obligations as rapidly as possible. When we do reach the time when the bonded debt has been discharged, we are face to face with either a governmental issue of money or a bank issue based upon the assets of the banks.

Mr. CLAY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Georgia?

Mr. BAILEY. Certainly.

Mr. CLAY. I desire to ask the Senator from Texas another question. I have seen the statement made in the public press that it would be impossible to carry out the theory suggested by the Senator from Texas, for the reason that if the $500,000,000 of Treasury notes were issued redeemable in gold it would be impossible to redeem them, and in the event of a run on the Treasury that it would be too great a strain on the gold reserve. I will ask the Senator this: If I understand the bill which the majority of the committee reports, it provides for the banks issuing $500,000,000 of national-bank notes. If $500,000,000 of national-bank notes should be issued under the provisions of this bill, is it not true that all those notes would be redeemable in gold? In other words, the Government will guarantee the redemption of these additional notes; these additional bank notes are directly redeemable in Treasury notes, and the Treasury notes are redeemable in gold. How could there be any greater strain on the gold reserve by the issuing of Treasury notes than there would be by the issuing of national-bank notes under the provisions of this bill?

Mr. BAILEY. Mr. President, so far as it concerns the stock of gold in the Treasury, it is precisely the same whether the banks issue the $500,000,000 or the Government issues it. The notes issued under the provisions of this bill are redeemable in lawful money, and lawful money is redeemable in gold. In other words, the man holding a national-bank note can demand that the Government redeem it, and the Senator from Rhode Island has provided in this bill that upon demand the Government must redeem the note. He demands the redemption of his note. It is redeemed in lawful money, which, we will say in this instance, is a note of the United States, and he takes a note of the United States and then demands gold across the Treasury counter. If a conspiracy should be organized against the gold reserve of the Treasury, the $346,000,000 of United States notes now in circulation are ample to enable men to accomplish the purpose of that conspiracy. In other words, with $346,000,000 of Treasury notes, commonly known as "greenbacks," now outstanding, a raid upon the Treasury gold stock could be made just as successfully as it could with this additional $500,000,000.

Senators—well, I will not say Senators, because I will not assume that Senators make arguments except according to their convictions—but the people outside of the Senate who characterize my proposition as the recrudescence of greenbackism are either ignorant or worse, if, indeed, anything can be worse than ignorance in the discussion of a public question. Every dollar of the $500,000,000 which the bill I shall offer as a substitute proposes to issue is redeemable in coin, and there is only gold coin provided for now as redemption money. For a man to talk about our proposal as an effort to revive the old doctrine of the greenback party, which was not for redeemable money at all, as everybody knows, but which was for an irredeemable money, is absurd. Those good but misguided people simply proposed to write upon the face of a piece of paper the legend, "This is a dollar," and compel everybody to take it as a dollar. We propose no such absurdity as that now. We propose to issue the note of the Government supported by the pledge of the Government to redeem it. What do you gentlemen propose to issue? The note of the bank sustained and supported by the promise of the Government to redeem it if the bank does not. We propose as good a note as you do, as good a note as can be offered to the public.

Mr. President, at some future time I shall discuss this question, but I want to say to the Senator from Georgia now, and to all the Senators, that if I had the power there would be but one kind of paper money in this country by the 1st of next January. I would retire the bank notes and substitute for them the Government notes. I would retire the gold certificates and substitute for them the notes of the United States, and I would retire them without the least disturbance. I would simply provide that hereafter whenever a gold certificate should come into the Treasury in the ordinary course of collection it should be canceled and that in its place a Treasury note should be issued. Then I would take the gold now held in the Treasury against that gold certificate, and I would transfer that gold over to the general gold redemption fund, now held in the Treasury for the redemption of greenbacks, and in twelve months I would thus retire the gold certificates. I would have a gold reserve fund of approximately $900,000,000 in the Treasury of the United States, and surely every man will agree that with a Treasury reserve of $900,000,000 in gold we could easily carry two and a half billion of United States notes.

Our present system is a patchwork, and nothing but the unshaken confidence of the American people in the American Government has ever made it tolerable. A man goes into one place and he gets one kind of paper money; he goes into another place and gets another kind of paper money. There ought to be only one kind of paper money. Every dollar of it, of course, ought to be as good as any other dollar, but our whole financial system is one of shreds and patches, put together from time to time as the exigencies of the country have required. We ought to have a harmonious system, and there ought to be no notes in circulation in these United States except those issued by the sovereign power of the General Government and sustained by its taxing and other powers.

The time will come, and it is not very far distant, when the people of the United States will retire the greenbacks and have only a bank circulation or the people of the United States will retire the bank notes and have only a Government circulation. As between the two I would have small hesitation. I believe the right to coin and issue money is a sovereign power, and I would no more vote to authorize the banks to issue our

paper money than I would vote to lease the mints to a mining corporation and authorize them to coin our metallic money. That issue we will meet. We are not prepared, probably, to settle it now, and I am very well content that it must not be settled now, because it probably can not be wisely settled at this time. If we had to deal with it and dispose of it now, I very much fear that the banks would be clothed with this great and sovereign power, and I also very much fear that the Government would be compelled to become the guarantor of the bank notes.

When that time does come, if it shall come, after a thorough and intelligent discussion of the question, I have no doubt, Mr. President, what the judgment of the American people will be. When I say the judgment of the American people, I do not use that phrase as demagogues sometimes use it. I do not mean that the unthinking people who lack substance and intelligence will determine it; but I believe that the brain, the enterprise, the thrift, and the patriotism of the American people will ordain a system under which the American Government shall resume its great and sovereign function of coining and issuing money.

I want to say to the Senator from California that the statement he made a moment ago is a dangerous one to be made to the public at this time. He reminds the people that when these notes are issued, if these securities should depreciate, and if the Government should be left without ample collateral to protect these notes, the note holder has a prior lien upon the assets of the bank. That is a dangerous doctrine. That is the doctrine which makes asset currency so dangerous.

Mr. FLINT rose.

Mr. BAILEY. If the Senator will let me finish—if in a time of financial storm and stress, when men lack confidence in their bankers and in their banks, they are to be told that the men who hold the bank notes have a prior lien upon the deposits of the bank, you will intensify the depositors' distrust and you will compel a run upon the banks, actuated by the haste of men to withdraw what belongs to them before it is made the subject of a prior lien.

That is the folly of the men who talk about asset currency. The moment there was a breath of suspicion to disturb the financial and industrial and commercial repose of the country, the banks most subject to distrust would be the first ones to issue notes; and when a bank, already the subject of its depositors' suspicion, began to increase its liabilities, it would also begin to increase the fear of its depositors. You can not make a depositor leave his money in a bank whose solvency is open to question while he sees that bank issuing paper, every dollar of which is a prior lien against his deposit account. The inevitable effect of an asset currency, or any currency which gives the holder of a note a superior lien on the deposits of the bank, will be to intensify the depositor's distrust, because it reduces the depositor's security.

I was brought up in an old-fashioned way to believe that when a man's solvency was under question, the way to remove the question was for him to reduce his liabilities; but the modern doctrine is: Whenever there is any doubt about your ability to pay what you owe, increase your debts, and that will remove the suspicion. That is the inherent vice of an asset currency, and it would be a grave mistake to pass this bill and leave in the public mind any thought that the funds held back by the bank to satisfy its depositors might be required by the note holder for the redemption of its notes.

Mr. LODGE. Mr. President, I merely desire to give notice that at the proper time I shall offer the amendment which I send to the desk, which I ask may be read and printed.

The VICE-PRESIDENT. The proposed amendment will be stated.

The SECRETARY. After the word "taxes," in line 5, page 5, section 2, it is proposed to insert:

Bonds of the government of the Philippine Islands, bonds of the city of Manila, and bonds of railroads in the Philippine Islands, the principal or interest of which has been guaranteed by the government of the Philippine Islands in accordance with authority conferred by the laws of the United States.

The VICE-PRESIDENT. The amendment will be printed and lie on the table.

Mr. LODGE. Mr. President, in connection with the amendment and for convenience of reference, I desire to have two statements printed in the RECORD. I do not care to have them read. They are statements of the bonded indebtedness of the Philippine Islands.

The VICE-PRESIDENT. The Senator from Massachusetts asks that the statements referred to by him be printed in the RECORD. In the absence of objection, it is so ordered.

EXHIBIT A.

Bonds authorized and issued for the Philippines.

Title of bond.	Authorized by Congress.	Amount of issue.	Date issued.	Amount bid.	Payable.	Due.
Friar land bonds	Act of July 1, 1902	$7,000,000	Jan. 11,1904	107.577	1914	1934
Philippine public improvement bonds:						
First issue	Act of Feb. 6, 1905	2,500,000	Mar. 1,1905	109.06	1915	1935
Second issue	do	1,000,000	Feb. 1,1906	108.3747	1916	1936
Manila sewer and water:						
First issue	Act of July 1, 1902, as amended by act of Feb. 6, 1905	1,000,000	June 1,1905	109.5625	1915	1935
Second issue	do	2,000,000	Jan. 2,1907	109.1 for $15,000 109 for $30,000 105.777 for $1,955,000	1917	1937

To meet the interest and principal on these bonds ample sinking funds have been provided, and the bonds are now held on the market, notwithstanding the present depression, at prices well above those for which they were originally sold, as indicated above under the heading "Amount bid."

EXHIBIT B.

With reference to the "bonds of railways, the principal of which or the interest upon which has been guaranteed by the government of the Philippine Islands," it is well to state that the only bonds which have been issued under this clause are the bonds of the Philippine Railway Company, to which a concession has been granted under the terms of an act of Congress approved February 6, 1905.

Under this the total liability which the Philippine government may incur shall not at any time exceed $1,200,000. This of course fixes the maximum liability of the government. As a matter of fact, under the concessions heretofore granted, it will not exceed $600,000. It may be well to state here that the revenues of the Philippine government exceeded the total expenditures in the past fiscal year by $2,900,000.

Mr. BACON. Mr. President, I desire to ask the Senator from Rhode Island whether or not, in the deliberations of his committee, the question of including Territorial bonds as a security was considered? I will state to him before he replies that my inquiry is induced by the fact that I have had letters from bankers, who state that they hold Territorial bonds which are good security and which they desire to have included among those bonds to be recognized as legitimate security. I do not know whether or not the committee have considered the subject, and I thought, before offering the amendment, I would make the inquiry.

Mr. ALDRICH. Mr. President, as I have already stated, the committee have under consideration at the present time certain amendments to the provision in regard to the security to be received. The question was before the committee at one time, but there was a difference of opinion as to whether Territorial bonds of some classes should be received. The committee have not yet decided that question; but I hope at a later day we may present provisions that will be satisfactory to Senators upon that point.

Mr. BACON. Mr. President, I understand it is unnecessary that I should offer any formal amendment if the committee has the matter under consideration.

The VICE-PRESIDENT. The question is on agreeing to the pending amendment.

Mr. BACON. Mr. President, I understood the statement of the Senator from Rhode Island to be that he desired at this time to have action upon the formal amendments in order that the bill might be printed.

Mr. ALDRICH. In that form?

Mr. BACON. In that form, leaving the provisions open in all particulars to amendments. I suppose the necessary conclusion from that is that, in permitting the amendments to be acted upon and adopted, we are in no manner to be considered as having agreed to any one of them, but to having simply allowed it to be passed in that way in order that the Senator may get the bill printed in the shape in which he desires it.

The VICE-PRESIDENT. The Chair understands that the amendments, if agreed to——

Mr. BACON. Would be open to amendment.

The VICE-PRESIDENT. Would stand as amended unless further amended.

Mr. BACON. I understand that fully, but as the amendments are now to be put to a vote, and as some of us may not agree to all of these amendments, I thought it well that the statement should be made that they are now being agreed to simply pro forma.

Mr. HEYBURN. Mr. President, I should like to have a little fuller understanding in regard to the status of these amendments. Under the rules that govern us, if they are agreed to as we are now proceeding to consider committee amendments, it would seem to me that they would not be open to consideration again in Committee of the Whole, but that any attempt to amend them would have to be considered in the Senate after the bill had been reported by the Committee of the Whole. If that is not true, then I am mistaken as to the rules that govern the consideration of a bill before this body.

The VICE-PRESIDENT. The Senator from Idaho is correct under the rules of the Senate, but the Senator from Rhode Island asked a modification of the rules to the effect that the amendments, although agreed to in the manner now proposed, shall be open to further amendment in the Committee of the Whole.

Mr. HEYBURN. That was the statement which I sought to bring forth, that further amendments might be made in Committee of the Whole. It had not been so stated, so far as I had heard. The statement had merely been that it would be subject to further amendment. Of course that would be true in the Senate, but the understanding should be distinct that the bill should be treated in Committee of the Whole as though these amendments had not been considered at this time or acted upon.

I am unable to see that anything is to be gained by acting upon these amendments at this time, because it merely means that we are going to act twice upon the same question, which is repugnant to all rules of legislation. We have rules governing us as to the consideration of committee amendments; that when they are once adopted upon the reading of the bill for their consideration they can not be further considered in Committee of the Whole. Now, we are undertaking—by unanimous consent, perhaps, although unanimous consent has not been asked in the regular way—to pass upon these amendments in the Committee of the Whole, and then with the tacit understanding—that is perhaps as far as it goes—that the action of to-day shall be treated as a nullity.

I see nothing to be gained by that course. It seems to me we might just as well consider the committee amendments as we do on other occasions in regard to other bills, as we reach them, and when we have acted upon them under the rules which govern this body in its legislation, let that action stand until the bill comes before the Senate reported from the Committee of the Whole. It may result in some confusion or misunderstanding if we vote as we were proceeding to do, at the instance of the Chair, upon this amendment at this time and adopt it, making a record which shall govern us. I say frankly that it has been my intention to suggest some amendments and to differ with the committee in some slight particulars in regard to these proposed amendments; and it seems to me we are as ready now as we will be after the bill is again printed to take up these amendments. It seems to me we should proceed with a thorough understanding and entirely within parliamentary rules in passing these amendments.

Mr. ALDRICH. Mr. President, probably I failed to state clearly what my purpose was. I certainly must have, from the statement of the Senator from Idaho [Mr. HEYBURN]. I stated that I desired, if that was the pleasure of the Senate, to have the Senate consider and dispose of the formal amendments made by the committee. If there is any Senator who objects to any one of those amendments, I certainly shall be very glad to have it passed over. My purpose was to have the formal amendments reported by the committee, which were not objected to, made now, so that the bill might be printed in that form and the whole scheme of the committee be before the Senate in a straightforward form. I then intended, as I stated before, to ask the Senate to have that bill considered as the original text, subject to amendment in Committee of the Whole and everywhere else, as it would have been if it had been reported as a substitute instead of in the form in which it was presented.

If anybody objects to any one of these amendments, I am quite willing that it shall be passed over and considered at a subsequent time. If the Senator from Idaho, or any other Senator, is not ready to vote upon any of these amendments offered by the committee, and he believes that the convenience of the Senate would be better served by adopting some other plan, I have no objection. I have no purpose except to get at this question in the most expeditious way and in the way which will be most convenient to Senators.

Mr. HEYBURN. I am not certain that under the parliamentary law which governs this body it is possible to proceed as is suggested by the Senator from Rhode Island. His long experience in this body and his familiarity with parliamentary practice doubtless qualify him for expressing an opinion which should have more weight than any opinion I might entertain. But still it is necessary as we proceed in matters of this importance that even those of us least advised should understand exactly the situation which this bill occupies before this body.

Mr. President, I do not know that even by unanimous consent we can pass, or rather, in the language of the Senator, adopt, the amendments proposed by the committee and then again consider them as in Committee of the Whole. Perhaps no one would raise an objection, but it would make an unusual record in the consideration of a bill.

Mr. ALDRICH. I will say to the Senator from Idaho that it has been done many times in my experience in the Senate.

Mr. HEYBURN. Then I have no doubt that it was done under a tacit understanding that the rules would be considered suspended for that purpose.

Mr. ALDRICH. All unanimous consents are suspensions of the rules to that extent.

Mr. HEYBURN. Yes. Already some committee amendments have been read and passed rapidly which I desire shall be further considered before they are considered as having been adopted by this body.

The Senator from Rhode Island has used the term that these amendments of the committee be "adopted" at this reading. When an amendment is adopted, it is squarely within the rule which prohibits it from being further considered in Committee of the Whole. So we had better see that our record is straight. It is just as convenient to consider these amendments at this time as at another time, and the mere fact of reprinting the bill is a matter of minor importance. The bill is now printed in very convenient form for consideration. The amendments of the committee are indicated by the character of type. I would not like to feel that these amendments, which have been read to-day and in a perfunctory way passed or said to have been adopted, were not open to further consideration in this body as in Committee of the Whole, because there are some of them to which I desire to give further consideration.

While I would not assume to advise the older Senators in charge of this bill as to the proper manner of proceeding, I would suggest that we must protect ourselves in the right to consider this bill with that deliberation and thoroughness which seems to us proper.

A statement came from the Senator from Rhode Island that the committee proposed suggesting further amendments to this bill. It seems to me that also is not warranted under parliamentary practice. The bill has been reported to the Senate by the committee, and the committee's connection with it has been determined; and unless the Senate should refer it back to the committee, the committee can not make further amendments. We should like to feel when we take it up for consideration that we are proceeding under the ordinary and accepted parliamentary rules of this body; that we have before us all that the committee has to report; and then when we reach an amendment proposed by the committee, we shall consider it.

The bill has been read the first time for the information of the Senate, and I for one desire that as each committee amendment is reached it shall either be passed over for further consideration or that it shall be considered, and not that it shall be announced by the President that it is adopted.

I for one do not desire that any amendment of the committee which has been read to-day shall be considered as adopted, or that the record shall show that it was adopted, until it has been discussed to the satisfaction of the members of the Senate. I make this statement that there may be no misunderstanding in the future.

I now ask that any order or statement that may have been made that any amendment has been adopted shall under the suggestion of the Senator from Rhode Island be taken as a mere formality, and that we may be entitled at this time or at any subsequent time during the consideration of this bill in the Committee of the Whole to discuss any amendment—those that have been passed to-day and those that have not been reached—because I desire when these amendments are reached to submit such views as I may have in regard to them.

Mr. ALDRICH. Mr. President, I ask unanimous consent that the amendments of the committee, with the exception of the amendment in lines 6, 7, and 8 on page 5, may be considered as adopted pro forma, with an understanding, by unanimous

consent, that the bill shall then, in Committee of the Whole, as an original bill, be open to any amendment to any part of the bill; and then I will ask that the bill be printed with the amendments as made.

Mr. HEYBURN. I should like to inquire of the Senator from Rhode Island if, when he employs the term "adopted" in asking unanimous consent that the amendments, with the exception of the one in section 5, be considered as adopted, he uses it in its full parliamentary sense?

Mr. ALDRICH. I will use any word the Senator from Idaho, in his wisdom, thinks proper. I will say "accept;" that the amendments shall be accepted pro forma. I will make it apply to all amendments in the bill that have been "adopted" or otherwise, as the Senator may see fit. I have no desire to use any word that is obnoxious to the Senator from Idaho.

Mr. HEYBURN. I move to reconsider the action of the Senate in adopting any committee amendment that has been read to-day.

The VICE-PRESIDENT. The Chair will first put the request of the Senator from Rhode Island for unanimous consent. The Chair asks the Senator from Rhode Island kindly to restate his request.

Mr. ALDRICH. My request is that the amendments of the committee to the bill, with the exception of the amendment on page 5 with reference to the description of bonds to be accepted, be considered as accepted pro forma, with an understanding that the bill after that acceptance shall be open to amendment in Committee of the Whole as an original bill.

Mr. CULBERSON. I desire to inquire if that includes the amendment on page 11, to strike out?

Mr. ALDRICH. I am quite willing to except that also if the Senator from Texas desires it.

Mr. CULBERSON. I do. I think that is an important amendment which the committee has made, and personally I should vote against the amendment. I do not desire to be understood as agreeing that that amendment shall be accepted.

Mr. ALDRICH. All right. I will except also the amendment at the top of page 11.

The VICE-PRESIDENT. The Senator from Rhode Island asks unanimous consent that the amendments of the committee, excepting the amendment on page 5, lines 5, 6, 7, and 8, and the amendment on page 11, be accepted pro forma, and be open to future amendment.

Mr. CULLOM. In Committee of the Whole?

Mr. ALDRICH. In Committee of the Whole.

The VICE-PRESIDENT. In Committee of the Whole, as though not agreed to. Is there objection?

Mr. HEYBURN. I wish to make a parliamentary inquiry. Under what rule of parliamentary law can we accept the amendments of the committee that have not been read in any other way than as they are ordinarily accepted under parliamentary law? What rule of this body authorizes us to accept amendments of the committee pro forma that have not been read?

Mr. ALDRICH. I will allow the bill to be read through, and then make the request. I am quite aware that the technical objection made by the Senator from Idaho is a good one, perhaps, and I will ask to have the bill read and then prefer the same request.

Mr. HEYBURN. I do not desire to be captious, certainly, in this matter. I only desire that no amendment shall be given any status that it would not have had the statement not been made that the amendment of the committee is accepted. I desire that the status of the committee amendments should remain exactly as it would have stood before this body had that statement not been made from the Chair.

The VICE-PRESIDENT. Does the Senator from Rhode Island withdraw his request?

Mr. ALDRICH. I do not. I am willing to have the Senator from Idaho object, if he desires. I do not withdraw it.

The VICE-PRESIDENT. Does the Senator from Idaho object to the request?

Mr. HEYBURN. I object.

The VICE-PRESIDENT. Objection is made.

Mr. BACON. Mr. President, this is a matter of some little importance, as it affects what is the ordinary method of procedure in the Senate.

Mr. ALDRICH. I withdraw the request, Mr. President.

Mr. BACON. I understand that. I will say that I am on the side of the Senator from Rhode Island, in order that he may not misunderstand what I propose to say.

The Senator from Rhode Island has proceeded in the way which is entirely usual in this body. In a large parliamentary assembly rigid adherence to parliamentary law is necessary, that the body may proceed with some degree of accuracy and intelligence in the consideration of measures; but in a small body like the Senate it is perfectly practicable to proceed in some generally understood and recognized and consented-to way which may not be strictly in accord with parliamentary law.

Senators will recall that in the consideration of all measures of importance here, where they are of any length, such, for instance, as appropriation bills or the rate bill upon which we were engaged in the last Congress, it has been the universal custom to proceed just as the Senator from Rhode Island proposed to proceed to-day; and the adoption of an amendment, with a full understanding that it does not preclude further amendment to that amendment, while in absolute violation of strict parliamentary law, is in accord with what will, in a small body like this, result in attaining the end in the easiest way.

Mr. President, the only reason why I mention the matter after the Senator from Rhode Island has withdrawn his request is that if the Senator from Idaho can make effectual an objection of this kind to the extent that what we have heretofore adopted as the usual procedure must hereafter be discarded, we will be reduced to great inconvenience if we are hereafter to adhere strictly to the rules of parliamentary law.

This is a body where the highest rule is the rule of consent, and most of the work of the Senate is done by consent; and where it is consented to that we shall adopt amendments with a view to having the bill put in its most convenient shape thereafter to be amended, in what way will anybody be prejudiced and in what way will any amendment to which a Senator objects be put in a position where he can not subsequently reach it by amendment as perfectly as it could be if we did proceed in the technical way that the Senator from Idaho now proposes.

I think, in order that we may hereafter do as we have done in the past, and that we may proceed with this bill and with future bills as we have done in the past, it is important that the Senate should adhere to the practice which it has heretofore adopted, of a convenient, easy way of disposing of measures in a small body like this.

Mr. HEYBURN. I would inquire for information whether or not under parliamentary law, an amendment of the committee having been adopted and passed by, the bill could be amended by reconsidering that amendment which had been adopted? Now, it is not sufficient to have the right to amend the bill as though it were originally in Committee of the Whole, but we want the right reserved to consider amendments of the committee. I desire to know whether or not it would be held that an amendment which attacked the entire amendment that had been adopted was an amendment within the reserved right suggested by the Senator from Rhode Island. That is a parliamentary inquiry which is not without some force. We want the full right, should our judgment dictate that we should exercise it, to resist the adoption of amendments of the committee; not to amend them, but to resist their adoption, and if we have waived that by sitting quietly by to-day while it is announced that an amendment of the committee is adopted, it is now time we knew it. This is the time to know it.

I am not inclined to invoke parliamentary law in its strictest sense. I have no purpose in doing so inimical to the consideration of this bill or the final result. I only desire that before these amendments proposed by the committee are adopted that they shall be considered and discussed and voted upon. Of course we would have a right to amend the bill in Committee of the Whole, but not, under the parliamentary law that governs us, should anyone see fit to invoke it, as though these amendments had not been adopted. We would not have a right to resist or attack the entire amendment of the committee.

Mr. GALLINGER. You would have in the Senate.

Mr. HEYBURN. In the Senate we would, but we prefer to reserve that right under the broader rule of the Committee of the Whole. Of course any opposition to the amendments or to the bill can be made in the Senate after the Committee of the Whole has reported it. But I want the discussion and the parliamentary right retained as fully as to every part of this bill as though no amendment of the committee had been adopted.

No more important measure will be before us. We have time enough to consider the amendments now, as much time as we will ever have, and we had better proceed slowly from the beginning of the bill, taking up the amendments as we reach them, and discuss them, and then after the amendments are disposed of we will discuss the bill as amended in Committee of the Whole and then again in the Senate under the more restricted rule that pertains to that body.

Mr. ALDRICH. Mr. President——

Mr. HEYBURN. I have a motion before the Senate. However, I yield to the Senator from Rhode Island.

Mr. ALDRICH. I do not ask the Senator to yield to me. I will take the floor in my own right whenever the Senator from Idaho is through.

Mr. HEYBURN. I have moved a reconsideration of the votes by which committee amendments have been adopted. That motion is before the Senate.

Mr. ALDRICH. Mr. President, three-quarters of the business of the Senate is done by unanimous consent, and that business can be at any time interrupted or delayed indefinitely by objections of Senators. The right to object, of course, is a sacred right in this body. I certainly have no disposition to try to do anything against the wishes of Senators upon this question. I am quite willing to have the Senate vote, if it sees fit, upon the question of reconsideration. None of the amendments already adopted is an amendment to which I think any Senator would object.

Mr. BACON. And no amendment has been adopted which under the unanimous-consent agreement asked for by the Senator from Rhode Island could not be reached by a motion to strike out.

Mr. ALDRICH. That is right.

Mr. BACON. It is absolutely within the control of the Senate.

Mr. FULTON. I also understand that under the rules by which we were working an amendment may be offered to any of the amendments which have been accepted.

Mr. ALDRICH. Certainly.

The VICE-PRESIDENT. The question is on agreeing to the motion of the Senator from Idaho, that the vote by which the amendment was heretofore agreed to be reconsidered.

The motion was rejected.

The VICE-PRESIDENT. The question recurs on agreeing to the pending amendment reported by the Committee on Finance.

Mr. HEYBURN. I should like to have the amendment stated.

The SECRETARY. On page 3, lines 9, 10, and 11, it is proposed to strike out "75 per cent of the market value, as fixed by the Treasurer of the United States, of the bonds so deposited," and insert:

Seventy-five per cent of the market value of any railroad bonds and 90 per cent of the market value of any other bonds so deposited, such market value to be ascertained and determined under the direction of the Secretary of the Treasury.

Mr. HEYBURN. Mr. President, I understand that if we adopt this amendment of the committee we accept the provision including railroad bonds among those that may be deposited as a basis of circulation. I do not believe we are ready to adopt that as an amendment. The Senate having voted not to reconsider its action adopting the previous amendment, it seems to me quite important that at this time we consider the amendment before us. The amendment proposed by the committee is that circulation may be issued to the extent of 75 per cent of the market value of any railroad bonds and 90 per cent of the market value of any other bonds so deposited.

Mr. President, the market value of a number of railroad bonds which, under the rule stated in this bill, would be available, is as much as 20 above par. I have a list of some of the bonds that would be considered available for this purpose. For instance, the Central of New Jersey bonds were quoted on last Saturday at 126. That would be taken to be the market value of those bonds, because they bring that in the market. Is the Senate ready to adopt an amendment of the committee which says that circulation may be issued against those bonds at 126, on a basis of 75 per cent?

Mr. McLAURIN. Will the Senator allow me to interrupt him?

Mr. HEYBURN. Certainly.

Mr. McLAURIN. I have an amendment to that amendment limiting the issuance to 75 per cent of the par value of the bonds, which, as stated by the Senator from Texas correctly, is intended to prohibit the issuance of more than 75 per cent upon the par value and less than 75 per cent of the par value if the actual worth of the bonds should be less than the par value. I am opposed to the issuance of bank notes upon any railroad bonds, but I understand that under the unanimous consent, which was asked by the Senator from Rhode Island, after the bill shall have been read as in Committee of the Whole, and after all these amendments shall have been adopted, if they shall be adopted, it will be in the power of the Senate, upon the motion of any member of the Senate, to strike out that whole amendment.

That was the unanimous-consent agreement which was requested by the Senator from Rhode Island, and, as I said. I think it would be better for us to give that unanimous consent until we get through the reading of the bill. Then, when we shall have gotten through with the reading of the bill and the formal adoption of the amendments, we can treat the bill, as suggested by the Senator from Rhode Island, as if it were an original bill, with the permission of any Senator to move to strike out the whole provision or any other provision of the bill.

Mr. HEYBURN. Mr. President, I understand that now to be the rule of action, established by unanimous consent. When I objected to unanimous consent I did not do it in a captious spirit or intend to delay the consideration of the bill or to interfere with the plan of procedure which had been outlined by the Senator from Rhode Island. In making the objection I intended to take advantage of the opportunity of determining exactly the status of the bill and the manner in which it was to be considered.

Mr. President, I called attention to this provision at this time because it contains in it a recognition, in the enumeraton of securities, of railroad bonds. Of course an amendment would be proper, striking out that portion of the amendment; in other words, an amendment to the amendment would be proper when the bill is being considered as in Committee of the Whole under the unanimous-consent agreement or the present agreement.

But it certainly is important at the beginning of the consideration of this bill that there shall be no uncertainty as to its status at any time. This is the second reading of the bill. It has a status given to it by the parliamentary law that governs us. While we may by unanimous consent proceed along other lines or under other rules than those established by the fundamental law which governs us, yet it is quite important that there should be no uncertainty as to the extent to which the unanimous consent is intended to apply.

I do not intend at this time to discuss the provision giving railroad bonds the status of Government bonds as a basis of circulation. I do expect at a future time to consider that question. I need hardly say that I am opposed to such a financial system, and I shall oppose the recognition of railroad bonds as a legitimate basis for the issuance of circulation guaranteed by the Government.

Mr. ALDRICH. Mr. President, the question whether railroad bonds shall be accepted under the provisions of this act comes up in the paragraph on the fifth page of the bill. If the Senator thinks it is involved here, I am quite willing to pass the amendment over with an idea that the provisions on the fifth page shall be considered first. I therefore ask that this amendment may be passed over for the accommodation of the Senator from Idaho.

The VICE-PRESIDENT. The Senator from Rhode Island asks that the pending amendment, on page 3, be passed over. Without objection, it is so ordered. The Secretary will continue the reading of the bill.

The Secretary resumed the reading of the bill, at line 15, page 3.

The next amendment of the committee was, in section 1, page 3, line 20, after the word "notes," to strike out the following:

Provided, That the amount of such additional circulating notes delivered at any time to any association shall not in any case exceed the limit fixed for such issue by the Comptroller of the Currency: *And provided further.*

The amendment was agreed to.

The next amendment was, on page 4, line 1, after the word "association," to insert "including notes;" and in line 2, after the word "bonds," to strike out "or otherwse" and insert "as now provided by law, and notes secured by other bonds as provided by this act;" so as to read:

Provided, That the total amount of circulating notes outstanding of any national banking association, including notes secured by United States bonds, as now provided by law, and notes secured by other bonds as provided by this act, shall not at any time exceed the amount of its unimpaired capital and surplus.

Mr. HEYBURN. I ask that that amendment be passed over. That also carries with it the feature of the railroad bonds.

Mr. ALDRICH. I beg the Senator's pardon; it does not.

Mr. HEYBURN. It says "other bonds."

Mr. ALDRICH. Other bonds may be bonds of States or cities.

Mr. KEAN. "As provided by this act."

Mr. HEYBURN. This act provides for the issuance of circulation upon railroad bonds, and the term "other bonds," as I read it, is intended to distinguish bonds other than national bonds.

Mr. ALDRICH. If railroad bonds are not provided in this act, it will not apply.

Mr. HEYBURN. It will not if they are not provided, but as the bill is reported of course it applies to them.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

The next amendment was, in section 1, on page 4, line 8, after the word "than," to strike out "two hundred and fifty" and insert "five hundred," and in line 9, after the word "dollars," to strike out the following proviso:

And provided further, That all acts and orders of the Comptroller of the Currency and the Treasurer of the United States authorized by this section shall have the approval of the Secretary of the Treasury.

So as to read:

And provided further, That there shall not be outstanding at any time circulating notes issued under the provisions of this act to an amount of more than $500,000,000.

The amendment was agreed to.

The next amendment was, in section 2, page 4, line 14, after the word "Treasury," to strike out "may" and insert "shall;" in line 18, after the word "issued," to strike out "for municipal purposes;" in the same line, after the word "city," to insert "town;" in line 19, before the word "county," to strike out "or;" in the same line, after the word "county," to insert "other legally constituted municipality or district;" in line 20, after the word "existence," to strike out "as a city or county;" in line 21, after the word "of," to strike out "fifteen" and insert "ten;" in line 24, after the word "it," to strike out "and which has at such date more than 20,000 inhabitants as established by the last national census;" on page 5, line 2, after the word "net," to insert "funded;" in line 3, after the word "of," to strike out "the" and insert "its," and in the same line, after the word "property," to strike out "therein," so as to read:

That the Treasurer of the United States, with the approval of the Secretary of the Treasury, shall accept as security for the additional circulating notes provided for in the preceding section bonds or other interest-bearing obligations of any State of the United States, or any legally authorized bonds issued by any city, town, county, or other legally constituted municipality or district in the United States which has been in existence for a period of ten years, and which for a period of ten years previous to such deposit has not defaulted in the payment of any part of either principal or interest of any funded debt authorized to be contracted by it, and whose net funded indebtedness does not exceed 10 per cent of the valuation of its taxable property, to be ascertained by the last preceding valuation of property for the assessment of taxes.

Mr. STONE. I desire to ask the Senator from Rhode Island whether the language in line 19, "or other legally constituted municipality or district," would cover bonds issued by school districts, and was so intended?

Mr. ALDRICH. Unquestionably they are covered by it. That was the intention of the committee.

The amendment was agreed to.

The next amendment was, in section 2, on page 5, line 6, after the word "company," to strike out "not including street railway bonds" and insert "which, in compliance with existing law, reports regularly to the Interstate Commerce Commission a statement of its condition and earnings, and," so as to read:

Or the first-mortgage bonds of any railroad company, which, in compliance with existing law, reports regularly to the Interstate Commerce Commission a statement of its condition and earnings, and which has paid dividends of not less than 4 per cent per annum regularly and continuously on its entire capital stock for a period of not less than five years previous to the deposit of the bonds.

Mr. ALDRICH. I ask that the sentence commencing with "or" after the semicolon in the fifth line down to the word "bonds" in the twelfth line may be passed over.

The VICE-PRESIDENT. Without objection, it will be passed over.

The reading of the bill was continued.

The next amendment of the Committee on Finance was, in section 2, page 5, line 13, after the word "Treasury," to strike out "may" and insert "shall;" in line 16, after the word "may," to insert "with such approval," and in line 19, after the word "deposit," to insert "It shall be the duty of the Secretary of the Treasury to obtain information with reference to the value and character of the municipal and railroad securities authorized to be accepted under the provisions of this section, and he shall from time to time furnish information to national banking associations as to such bonds as would be acceptable as security under the provisions of this act," so as to read:

The Treasurer of the United States, with the approval of the Secretary of the Treasury, shall accept, for the purposes of this act, securities herein enumerated in such proportions as he may from time to time determine, and he may with such approval at any time require the deposit of additional securities or require any association to change the character of the securities already on deposit. It shall be the duty of the Secretary of the Treasury to obtain information with reference to the value and character of the municipal and railroad securities authorized to be accepted under the provisions of this section, and he shall from time to time furnish information to national banking associations as to such bonds as would be acceptable as security under the provisions of this act.

The amendment was agreed to.

The next amendment was, in section 3, page 5, line 26, after the word "That," to insert "the legal title of;" in the same line, after the word "bonds," to insert "whether coupon or registered;" and on page 6, line 4, after the word "them," to strike out "with a memorandum to that effect attached to or written or printed on each bond, and signed by the cashier or some other officer of the association making the deposit," and insert "under regulations to be prescribed by the Secretary of the Treasury," so as to read:

That the legal title of all bonds, whether coupon or registered, deposited to secure circulating notes issued in accordance with the terms of this act shall be transferred to the Treasurer of the United States in trust for the association depositing them, under regulations to be prescribed by the Secretary of the Treasury.

The amendment was agreed to.

The next amendment was, in section 3, on page 6, line 9, after the word "the," to strike out "Comptroller of the Currency, or by a clerk appointed by him for that purpose," and insert "Treasurer or any assistant treasurer of the United States," so as to read:

A receipt shall be given to the association by the Treasurer or any assistant treasurer of the United States, stating that such bond is held in trust for the association on whose behalf the transfer is made, and as security for the redemption and payment of any circulating notes that have been or may be delivered to such association.

The amendment was agreed to.

The next amendment was, in section 3, on page 6, line 20, after the word "sixty-seven," to insert "and sections 5224 to 5234, inclusive," so as to read:

The provisions of sections 5163, 5164, 5165, 5166, and 5167 and sections 5224 to 5234, inclusive, of the Revised Statutes, respecting United States bonds deposited to secure circulating notes shall, except as herein modified, be applicable to all bonds deposited under the terms of this act.

The amendment was agreed to.

The next amendment was, in section 4, page 7, line 17, after the word "bonds," to insert "of the United States," so as to read:

And such associations having on deposit bonds of the United States bearing interest at a rate higher than 2 per cent per annum shall pay a tax of one-half per cent each half year upon the average amount of such of its notes in circulation as are based upon the deposit of such bonds.

The amendment was agreed to.

The next amendment was, in section 5, page 9, at the end of the section, to strike out the following proviso:

Provided, That the provisions of this section shall not apply to United States bonds called for redemption by the Secretary of the Treasury, nor to withdrawal of circulating notes in consequence thereof.

The amendment was agreed to.

The next amendment was, in section 6, page 10, line 8, after the word "cashier," to strike out "Upon request of any national banking association the" and insert the word "The;" in line 9, after the word "currency" to insert "acting;" in line 11, after the word "shall," to insert "as soon as practicable;" in line 14, after the words "stock of," to strike out "such association" and insert "the national banking associations;" in line 17, before the word "association," to strike out "the" and insert "each," and in the same line, after the word "association," to strike out "making the request," so as to read:

The Comptroller of the Currency, acting under the direction of the Secretary of the Treasury, shall as soon as practicable cause to be prepared circulating notes in blank, registered and countersigned, as provided by law, to an amount equal to 50 per cent of the capital stock of the national banking associations; such notes to be deposited in the Treasury or in the subtreasury of the United States nearest the place of business of each association, and to be held for such association, subject to the order of the Comptroller of the Currency, for their delivery as provided by law.

The amendment was agreed to.

The next amendment was in section 8, page 11, line 1, after the words "SEC. 8," to strike out "That national banking associations located outside of reserve or central reserve cities, which are now required by law to keep a reserve equal to 15 per centum of their deposited liabilities, shall hereafter hold at all times at least two-thirds of such reserve in lawful money. The," and in line 6, before the word "provisions," to insert "That the;" so as to make the section read:

SEC. 8. That the provisions of section 5191 of the Revised Statutes, with reference to the reserves of national banking associations, shall not apply to deposits of public moneys by the United States in designated depositaries.

Mr. ALDRICH. I ask that that amendment may be passed over.

The VICE-PRESIDENT. Without objection the amendment will be passed over.

The next amendment was, on page 11, after line 9, to insert the following as an additional section:

SEC. 9. That all acts and orders of the Comptroller of the Currency and the Treasurer of the United States authorized by this act shall have the approval of the Secretary of the Treasury.

The amendment was agreed to.

Mr. ALDRICH. I ask that the bill as amended be printed.

The VICE-PRESIDENT. The Senator from Rhode Island asks that the bill as amended be printed. Without objection it is so ordered.

Mr. BAILEY. I should like to inquire if that means it is to be printed with these amendments merely appearing as amendments or as part of the original text?

Mr. ALDRICH. I think it would be better to have them printed as a part of the original text.

Mr. BAILEY. I think so. That is what I was going to suggest.

Mr. ALDRICH. Leaving only the two amendments that have been reserved.

Mr. BAILEY. And printing them as amendments?

Mr. ALDRICH. Yes; printing those as amendments.

The VICE-PRESIDENT. Without objection, it is so ordered.

EXECUTIVE SESSION.

Mr. ALDRICH. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session the doors were reopened and (at 5 o'clock and 5 minutes p. m.) the Senate adjourned until to-morrow, Wednesday, February 12, 1908, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate February 11, 1908.

UNITED STATES ATTORNEY.

Thomas Ward, jr., of Colorado, to be United States attorney for the district of Colorado, vice Earl M. Cranston, resigned.

REGISTER OF LAND OFFICE.

William Miller, of Minnewaukon, N. Dak., to be register of the land office at Devils Lake, N. Dak., vice Michael H. Brennan, resigned.

APPOINTMENT IN THE ARMY.

Coast Artillery Corps.

Quartermaster-Sergt. Clarence E. Seybt, Third Company Coast Artillery Corps, to be second lieutenant from January 1, 1908.

PROMOTIONS IN THE NAVY.

Midshipmen to be ensigns.

Hiram L. Irwin,
William R. Furlong,
Gerald Howze,
William O. Spears,
Ernest Durr,
John H. Newton, jr.,
Anthony J. James,
William E. Eberle,
Wilhelm L. Friedell,
Walter E. Reno,
John J. London,
Ross S. Culp,
William Baggaley,
Halford R. Greenlee,
John E. Atkinson,
Virgil Baker,
Henry A. Orr,
Alexander S. Wadsworth, jr.,
Benjamin H. Steele,
Kenneth Whiting,
Charles M. Austin, and
John E. Pond.

Assistant paymasters with the rank of lieutenant.

Benjamin H. Brooke,
Thomas J. Bright,
Emory D. Stanley,
Lewis W. L. Jennings,
Brantz Mayer,
Swinton L. Bethea,
Edward R. Wilson,
William G. Neill,
Harry E. Collins,
John H. Gunnell,
Emmett H. Tebeau,
Charles E. Parsons,
William J. Hine,
Kenneth C. McIntosh,
Francis J. Daly,
Roland W. Schumann,
Franklin P. Williams,
Leon N. Wertenbaker,
John J. Luchsinger, jr.,
Eugene H. Douglass,
Robert K. Van Mater,
William S. Zane, and
James C. Hilton.

Assistant naval constructors with the rank of lieutenant.

Ross P. Schlaback,
George S. Radford,
James L. Ackerson,
Donald R. Battles,
Richard D. Gatewood,
Isaac I. Yates,
George C. Westervelt,
Charles W. Fisher, jr.,
Holden C. Richardson,
John H. Walsh,
Edward C. Hamner, jr.,
Emory S. Land,
James Reed, jr.,
Edwin G. Kintner,
Alexander H. Van Keuren,
Paul H. Fretz, and
Roy W. Ryden.

Ensign Julius C. Townsend to be a lieutenant (junior grade) in the Navy from the 2d day of May, 1907, upon the completion of three years' service.

Lieut. (Junior Grade) Julius C. Townsend to be a lieutenant in the Navy from the 2d day of May, 1907, to fill a vacancy existing in that grade on that date.

Asst. Surg. Lewis H. Wheeler to be a passed assistant surgeon in the Navy from the 22d day of April, 1907, upon the completion of three years' service.

Asst. Surg. Lewis H. Wheeler to be a passed assistant surgeon in the Navy from the 22d day of April, 1907, upon the completion of three years' service.

Charles L. Moran, a citizen of Massachusetts, and Arthur C. Stanley, a citizen of Wisconsin, to be assistant surgeons in the Navy from the 10th day of February, 1908, to fill vacancies existing in that grade on that date.

CONFIRMATIONS.

Executive nominations confirmed by the Senate February 11, 1908.

COLLECTOR OF INTERNAL REVENUE.

Robert O. Eaton, of Connecticut, to be collector of internal revenue for the district of Connecticut.

POSTMASTERS.

FLORIDA.

Harry C. Budge to be postmaster at Miami, Dade County, Fla.

Simeon C. Dell to be postmaster at Alachua, Alachua County, Fla.

George Glass to be postmaster at High Springs, Alachua County, Fla.

Charles J. Schoonmaker to be postmaster at Cocoa, Brevard County, Fla.

NEW YORK.

Frank E. Colburn to be postmaster at Medina, Orleans County, N. Y.

Mortimer N. Cole to be postmaster at Castile, Wyoming County, N. Y.

Dudley S. Mersereau to be postmaster at Union, Broome County, N. Y.

Eugene P. Strong to be postmaster at Bay Shore, Suffolk County, N. Y.

NORTH CAROLINA.

Willis P. Edwards to be postmaster at Franklinton, in the county of Franklin and State of North Carolina.

PENNSYLVANIA.

Otto E. Enders to be postmaster at Elizabethville, Dauphin County, Pa.

Elam M. Stauffer to be postmaster at East Greenville, Montgomery County, Pa.

HOUSE OF REPRESENTATIVES.

TUESDAY, *February 11, 1908.*

The House met at 12 o'clock noon.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of the proceedings of yesterday was read and approved.

REDUCTION OF SKILLED LABOR IN THE NAVY-YARD.

The SPEAKER. Yesterday, just before adjournment, a point of order was made to a resolution reported from the Committee on Naval Affairs, which was briefly argued. The Chair sustains the point of order, and it is proper, very briefly, to assign the reasons therefor.

The provision of the resolution offered by the gentleman from Illinois, calling upon the Secretary of the Navy to state his reasons for the action referred to, presents a new aspect of a principle already settled. The House from its earliest history has exercised and cherished its prerogative of calling on the Executive for information and documents. In 1792, at the very beginning of the Government, the House decided that the Secretaries of the President's Cabinet should not be called personally to the floor of the House to give information, and concluded that written information should be furnished instead. From that time until this no Cabinet officer has given information on the floor of the House, although they have been frequently called before committees to testify, either voluntarily or by subpœna.

Resolutions calling for written information and for documents have in the later years of the House been given a privileged status, but the precedents show that this privilege has been confined within somewhat strict lines. It is allowable to call upon the head of a Department for a statement of facts within the knowledge of his Department, but whenever an attempt has been made to call for opinions or to direct the officer to make an investigation it has been held that these provisions destroy the privilege of the resolution of inquiry.

It is not necessary to cite here the precedents in these cases, as they are well known to the membership of the House.

The Chair is of the opinion that a call upon an executive officer for a statement of his reasons is likewise out of harmony with the principles governing the use of these resolutions. It would tend to create discussion and debate between the executive and legislative branch and would not assist in the orderly and proper transaction of the public business.

Mr. FOSS. Mr. Speaker, I ask unanimous consent to strike out the last four words of the resolution, "and the reasons therefor." I understand that under the decision of the Chair the resolution would then become privileged.

The SPEAKER. The gentleman from Illinois asks unanimous consent for present consideration of the resolution upon condition that the words "and the reasons therefor" be stricken out. Is there objection? [After a pause.] The Chair hears none. The question now is on the committee amendments with the words indicated stricken out.

The amendments were agreed to.

The resolution as amended was agreed to.

URGENT DEFICIENCY BILL.

Mr. TAWNEY. Mr. Speaker, I call up the conference report on the urgent deficiency appropriation bill, and ask unanimous consent that the reading of the report be dispensed with and that the statement be read in lieu thereof.

The SPEAKER. The gentleman from Minnesota asks unanimous consent that the statement be read in lieu of the report. Is there objection?

There was no objection.

The conference report is as follows:

CONFERENCE REPORT.

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 14766) "making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1908, and for prior years, and for other purposes," having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment numbered 1.

That the House recede from its disagreement to the amendments of the Senate numbered 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, and 70, and agree to the same.

Amendment numbered 2: That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment as follows: In lieu of the sum proposed insert: "One hundred and twelve thousand dollars;" and the Senate agreed to the same.

Amendment numbered 3: That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment as follows:

After the word "That," in line 1 of said amendment, insert the words: "not exceeding the sum of five thousand dollars of;" and the Senate agree to the same.

The committee of conference have been unable to agree on the amendments of the Senate numbered 5, 11, and 26.

J. A. TAWNEY,
EDWARD B. VREELAND,
L. F. LIVINGSTON,
Managers on the part of the House.

W. B. ALLISON,
H. M. TELLER,
Managers on the part of the Senate.

The statement was read as follows:

STATEMENT.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H. R. 14766, making appropriations to supply urgent deficiencies, submit the following written statement in explanation of the effect of the action agreed upon and recommended in the accompanying conference report as to each of the amendments of the Senate, namely:

On amendment numbered 1: Strikes out the appropriation of $1,500 proposed by the Senate for paper for checks.

On amendment numbered 2: Appropriates $112,000 instead of $107,000, as proposed by the House, and $142,000, as proposed by the Senate, for furnishing the new municipal building in the District of Columbia.

On amendment numbered 3: Authorizes the use of not exceeding $5,000 of the appropriation for expenses of operating the compulsory education law in the District of Columbia for the purchase of necessary articles and supplies for instruction of ungraded classes.

On amendment numbered 4: Appropriates $2,475.80, as proposed by the Senate, for the Columbia Hospital for Women.

On amendments numbered 6 and 7: Makes a verbal correction in the text of the bill and appropriates $283,335, as proposed by the Senate, for additional clerical force in the Bureau of Supplies and Accounts of the Navy Department.

On amendments numbered 8, 9, and 10: Appropriates, as proposed by the Senate, $3,500 for suppressing the traffic in intoxicating liquors among the Indians, $50,000 to the credit of the Lower Brule, Sioux Indians, South Dakota, and $60,000 for surveys and allotment to Indians of lands of the Flathead Indian Reservation.

On amendments numbered 12, 13, 14, 15, 16, 17, 18, 19 and 20: Inserts the several appropriations proposed by the Senate for expenses of that body.

On amendments numbered 21, 22, 23, 24, and 25: Appropriates $6,401.47 for payment of judgments of the United States courts that have been certified to Congress and as proposed by the Senate.

On amendments numbered 27, 28, 29, and 30: Appropriates for additional judgments of the Court of Claims certified to Congress since the passage of the bill by the House.

On amendment numbered 31: Appropriates $52,237.75, as proposed by the Senate for payment of awards of the Spanish Treaty Claims Commission which have been duly certified to Congress.

On amendments numbered 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70: Appropriates, as proposed by the Senate, for payment of accounts audited under the law and certified since the passage of the bill by the House.

The committee of conference have been unable to agree on the following amendments of the Senate, namely:

On amendment numbered 5: To pay John H. Bankhead $1,875 for services as a member of the Inland Waterways Commission.

On amendment numberd 11: Providing for payment of expenses in the case of the United States against Hyde, Dimond, Benson, and Schneider, in the District of Columbia.

On amendment numbered 26: To pay interest on judgment in favor of the Atlanta Machine Works against the United States.

J. A. TAWNEY,
E. B. VREELAND,
L. F. LIVINGSTON,
Managers on the part of the House.

Mr. TAWNEY. Mr. Speaker, I move the adoption of the report of the conference committee.

Mr. MANN. Mr. Speaker, will the gentleman yield for a question?

Mr. TAWNEY. I will yield to the gentleman from Illinois.

Mr. MANN. I believe the Senate inserted an item of $75,000, or such a matter, for contingent expenses in the Senate. Is that one of the items agreed to?

Mr. TAWNEY. It is.

Mr. MANN. I know it is not customary for the House to interfere in such matters, but this is a very large deficiency. I think the House ought to know something in reference to it. A very grave abuse grew up, as it seemed to many Members in this body, about the contingent fund. What is the excuse for it?

Mr. TAWNEY. Mr. Speaker, I will say that the facts in regard to the contingent appropriations for the Senate are these: Under the current law for the fiscal year 1908 Congress appropriated $100,000 for contingent expenses for the Senate, and for the House $50,000, and a deficiency for the remainder of this year of $25,000. So that the appropriation for the contingent expenses of the House will be $75,000 for the current year, with a membership of 400, including Delegates and Resident Commissioners, while the Senate membership is 92. This additional deficiency makes the total appropriation for the current year on account of the contingent expenses of the Senate $175,000, or $100,000 greater than the contingent expenses of the House.

Your conferees asked for an explanation of this, and what has occasioned this enormous increase, but, as usual, we were unable to get any specific information; there was nothing said as to there being any great emergency or any unusual circumstances occurring during the year that necessitated this increase. They wanted it because they wanted it, and that is about the only answer that the conferees on the part of the House could elicit.

Mr. LITTLEFIELD. I would like to inquire what the normal sum is in the Senate. This is apparently an abnormal sum.

Mr. TAWNEY. They have been receiving $100,000 and a deficiency of about $25,000 to $50,000 annually. The expenditures for contingent purposes in the Senate have always exceeded the contingent expenses in the House. That is the only explanation that I can give, Mr. Speaker. There is no question but what there is necessity for some inquiry into this matter, but it is an inquiry this House is powerless to make or initiate. This shows an enormous expenditure under the head of contingent expenses in the other branch of the legislative department of this Government.

Mr. LITTLEFIELD. I would like to inquire of the gentleman whether this House can not make it by declining to agree to an appropriation of that kind until the information is furnished?

Mr. TAWNEY. Mr. Speaker, that experiment has been tried so frequently without any result except failure, that it was abandoned long before I came to the Committee on Appropriations. The House has been obliged ultimately to agree. To not do so would result only in delaying the final enactment of this law carrying these appropriations, the enactment of which is absolutely necessary on account of the urgent demand for some of these appropriations. They should become available at the earliest possible time, notably the Panama Canal deficiency.

The SPEAKER. The question is on the motion of the gentleman from Minnesota to agree to the report.

The question was taken, and the motion was agreed to.

Mr. TAWNEY. Mr. Speaker, I now move that the House further insist upon its disagreement to amendments Nos. 5, 11, and 26.

The SPEAKER. The question is on the motion of the gentleman from Minnesota that the House do further insist on its disagreement to the Senate amendments indicated.

Mr. TAWNEY. Mr. Speaker, a word of explanation. These three amendments are as follows: The first is a Senate amendment appropriating $1,875 for the payment of the services of Mr. BANKHEAD, formerly a Member of the House and now a member of the Senate, while he served as a member of the Inland Waterways Commission during the summer of 1906. The second amendment that I ask the House to further insist upon its disagreement to is No. 11, which authorizes the payment of the expenses incident to the prosecution of the Hyde-Benson case in the District of Columbia out of the general appropriation for judicial expenses. The third amendment, No. 26, is a Senate amendment proposing to pay interest on a claim upon which judgment was obtained, the interest allowed being the amount from a certain date to the date of the entry of the judgment, aggregating about $437. The last amendment, Mr. Speaker, No. 26, the House conferees declined to agree to for the reason that it is not, and never has been, the policy of the Government to pay interest on claims prior to the entry of judgment. This action was brought under the Tucker Act on a contract, alleging default on the part of the Government of the United States, and the plaintiffs in the action succeeded in establishing to the satisfaction of the court the fact of the default and the damages which were sustained by reason thereof, and judgment was allowed in the sum of $3,344, with legal interest from the date of the default down to the date of the rendition of the judgment. The matter as presented to the conferees was that the Attorney-General refused to certify the judgment to Congress as he is required to do by law for an appropriation. Instead of certifying, as we were told, the full amount of the judgment, including the interest and costs, the Attorney-General certified only the principal carried in the judgment, omitting to certify the amount for interest or the amount for costs. Upon inquiry of the Attorney-General I received a copy of the letter which was presented by Senator CLAY to the Senate, the Senator who offered the amendment in the Senate, a letter addressed to the attorney of the plaintiffs in the case, in which letter are cited the decisions of the Supreme Court on the question; but here is the important information which the conferees did not have when in conference, and which prompts me now to ask that the House further insist upon its disagreement. The Acting Attorney-General at that time, Mr. H. M. Hoyt, says:

> I might add that when the judgment in the case under consideration was certified to Congress, legal interest from December 2, 1899, with costs of suits, was included in the certification. Congress saw fit to ignore this implied recommendation that interest be paid, and appropriated for the amount of the judgment with interest at 4 per cent therefor, from the date of the rendition thereof only, thus recognizing the principle of law stated in the case above cited. * * * I find, however, that no appropriation has been made covering the costs, etc.

The fact is, this has previously been referred by the Attorney-General to Congress for an appropriation for principal and interest, and also for the costs. Now, Congress having had this matter certified, and having refused in the past to appropriate for this interest, I think we are justified in insisting further upon this disagreement.

Mr. UNDERWOOD. Mr. Speaker, may I ask the gentleman from Minnesota a question?

Mr. TAWNEY. Yes, sir.

Mr. UNDERWOOD. Mr. Speaker, I understand there is an item in this conference report in reference to my former colleague in this House [Senator BANKHEAD]. I would like to ask the gentleman if he proposes to allow a separate vote on that item?

Mr. TAWNEY. I suppose it is within the power of any Member of the House to ask for a separate vote on any of these amendments. I shall give an opportunity to the gentleman if he desires it.

Mr. UNDERWOOD. I would like to ask the gentleman, when he reaches a convenient time, if he will allow me a few minutes?

Mr. TAWNEY. I will yield to the gentleman from Alabama.

Mr. RICHARDSON. I would like to ask the gentleman a question

Mr. TAWNEY. Yes, sir.

Mr. RICHARDSON. Was not the Commissioner of the Bureau of Forestry on that Inland Waterways Commission?

Mr. TAWNEY. The Commissioner of the Bureau of Forestry? I do not know; I think he was, but I am not certain.

Mr. RICHARDSON. Is the compensation of any other individual who was a member of that Waterways Commission excepted to except that of Senator BANKHEAD?

Mr. TAWNEY. There is no other member of the Inland Waterways Commission for whom it is proposed to appropriate money to pay either for his services or for his expenses. Mr. BANKHEAD is the only member of that commission for whom an appropriation is asked to compensate him for the time served on that commission.

Mr. RICHARDSON. Will you allow me one more question? You do not object to giving me the reasons why there is opposition to this payment, do you? What reasons are urged for not paying it?

Mr. LITTLEFIELD. That is what I wanted to ask; I would like to have a full statement of just what the circumstances are.

Mr. TAWNEY. Mr. Speaker, the Inland Waterways Commission was appointed by the President of the United States very soon after the adjournment of the last Congress. On the last day of the session of the last Congress it was proposed to authorize by a joint resolution the creation or the appointment of this commission. A resolution for that purpose was offered in the House. It did not receive consideration. Now, the law,

section 3679 of the Revised Statutes, as amended by the act approved February 27, 1906, reads as follows:

Nor shall any Department or officer of the Government accept voluntary service for the Government or employ services in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property.

It is plain, Mr. Speaker, from the language of this section, that without express authority of law no Department and no executive officer of the Government can lawfully accept voluntary services or appoint any person to a position that has not been created by law; that being so, and the resolution proposing to authorize the appointment of this commission having failed to pass, there was, therefore, absolutely no authority for the appointment of this commission. Under this statute it is not within the power of any officer of the Government to create any obligation whatever imposing upon the Government or upon Congress the duty of appropriating any money to meet the same. For these reasons, Mr. Speaker, I do not feel that the House is justified in acquiescing in the unauthorized appointment of this by agreeing to this Senate amendment and appropriate money for either the services or the expenses of this or of any other member of this commission.

Mr. FITZGERALD. Mr. Speaker, will the gentleman yield? The gentleman states that there was no authority for the appointment of this commission. Should he not say its appointment was prohibited by law?

Mr. TAWNEY. I have read the law, which I think every Member of this House is capable of interpreting for himself. I regret, in answer to the gentleman from New York, to say that, in my opinion, the employment of services of this character is prohibited by the statute which I have just read. I do not criticise or question the motives of the Chief Executive in appointing this commission. I do not say this by way of criticism; I simply state it as a fact, that under the existing law there is no authority for the creation of this commission, and, therefore, there is no authority for appropriating any money for either the expenses or compensation of any member of the commission. If the law did not prohibit the appointment and we made the appropriation, we could not then be charged with acquiescing in the doing of that which was prohibited by law; otherwise that charge can be successfully made. That, Mr. Speaker, is all that I care to say in regard to this amendment.

Mr. LITTLEFIELD. I would like to inquire, Mr. Speaker, who are the other members of the commission?

Mr. TAWNEY. I can not give the personnel of the commission. I will say, however, it is my understanding that every other member of the commission was either a Member of the House, a member of the Senate, or a person holding some office in the Government.

Mr. LITTLEFIELD. And receiving a salary?

Mr. TAWNEY. And receiving the compensation provided by law.

Mr. HEPBURN. Mr. Speaker, I would like to ask the gentleman what was the total amount of increases added by the amendments of the Senate.

Mr. TAWNEY. A little over $300,000.

Mr. HEPBURN. Now, I understand the committee have yielded to all of those amendments except an item of about $1,000 and an item of $400?

Mr. TAWNEY. No; the gentleman is mistaken. The Senate has receded from its amendments on a number of these items. For example, they added $42,000 for furnishing and equipping the Municipal Building in this city. They yielded all of it, with the exception of $5,000, increasing the amount from $107,000 to $112,000. Then there were one or two other minor matters, but the increases added by the Senate principally were the audited accounts certified to the Senate after the passage of the urgent deficiency bill in the House. The principal increases, as the gentleman will see from the printed bill, are claims allowed by the Auditor for the War Department subsequent to the passage of the bill in the House, claims allowed by the Auditor for the Interior Department, claims allowed by the Auditor for the State and other Departments, and, I think, claims allowed by the Auditor for the Treasury Department. Those are all additional amounts.

Mr. HEPBURN. The House could vote down the proposition of the gentleman now pending and it would still appear that the House was represented in the conference and that the conferees of the House were not, using a common phrase, entirely "skunked."

Mr. TAWNEY. Yes, sir.

Mr. LITTLEFIELD. Not absolutely submerged.

Mr. CRUMPACKER. I would like to submit an observation or two in relation to the statement that the Inland Waterways Commission was appointed in violation of an express statute, and a highly penal one at that. I have the section of the law that the gentleman from Minnesota [Mr. TAWNEY] quoted in the course of his remarks. And, if I understand the authority or the object of the Inland Waterways Commission, it is not covered by this statute at all. It is not within its purpose or spirit. I understand that the Inland Waterways Commission was a commission selected by the President to secure information for his use, perhaps, and for the use of the country, for its instruction, respecting one of the important resources of the United States. It is on the same legal status as was the commission selected to investigate the anthracite coal controversy in Pennsylvania several years ago. I think the President of the United States does have the right to select a volunteer commission to seek information for the benefit of the President, at least, without violating any statute. The waterway commission was not, from the standpoint of the law, in the employment of the Government. It was a voluntary commission, seeking information for the benefit—personal or official benefit—of the Chief Executive, in order that he might make the necessary recommendations to the Congress that the Constitution of the United States requires of him.

Mr. FITZGERALD. Will the gentleman yield for a question?

Mr. LIVINGSTON. Mr. Speaker——

Mr. CRUMPACKER. I will yield to the gentleman from Georgia [Mr. LIVINGSTON].

Mr. LIVINGSTON. Will you please give the authority the President has, in face of direct law, to do this thing?

Mr. CRUMPACKER. My position is that there is no direct law prohibiting it, and that it is within the incidental powers of the President. The President, in seeking information for his official duties, may use any reasonable means he sees fit. This commission was not serving the Government, it was not in the employment of the Government in the sense of the law, but it was in the employment of the President.

Mr. LIVINGSTON. Does the gentleman understand the President has the right to commit this House to an appropriation in the face of law?

Mr. CRUMPACKER. Not by any manner of means. I do not understand that the President is asking the House to pay this claim as a legal demand. This commission was purely a voluntary commission selected by the President, without express authority of law, but it is not, I repeat, forbidden by law.

Mr. FITZGERALD. Out of what appropriation were the members of this commission paid?

Mr. CRUMPACKER. I assume they are not to be paid out of any appropriation unless one be made therefor.

Mr. FITZGERALD. They have been paid out of an appropriation.

Mr. CRUMPACKER. The Congress of the United States makes a great many appropriations for claims for which there is no legal basis. It does it repeatedly at every one of its sessions. There may be no law authorizing the payment of the expenses of this commission, and there is no law requiring the Congress to pay any compensation to any one of its members. I am not disputing that proposition, but the statement was made here that this commission was appointed by the President of the United States in direct violation of the law. That is the proposition I took the floor to controvert. It is quite a serious charge to make that the President of the United States has violated a penal law of the country. It is clear to any one who has taken the pains to examine the law in question that the charge is wholly unfounded.

Mr. FITZGERALD. I wish to inquire if the gentleman will give the information, if he has it, out of what appropriation the expenses so far incurred have been paid?

Mr. CRUMPACKER. Well, the gentleman from New York is a member of the Committee on Appropriations, and I know he has infinitely more knowledge upon that subject than I. I do not know out of what appropriation the expenses of this commission have been paid, or whether they have been paid at all. If they have been paid without authorization of Congress they were improperly paid. This statute applies purely to the heads of Departments accepting voluntary services from others for the Government.

Mr. TAWNEY. If the gentleman will read the law——

Mr. CRUMPACKER. I have read it.

Mr. TAWNEY (continuing). It states "or any executive officer."

Mr. CRUMPACKER. But "for the service of the Government," employment "for the Government." This employment was not "for the Government." It was not authorized for the Government any more than the investigation of the coal strike or the industrial situation at Goldfield.

Mr. TAWNEY. Then, on your own statement, why should Congress be compelled to pay the expense?

Mr. CRUMPACKER. I do not say that Congress should pay the commission. I do not contend that this claim ought to be paid. I admit there is no legal liability on the part of the Government. It is not a public claim. It is discretionary with Congress whether it shall be paid. I simply took the floor to urge that the commission was not appointed in violation of law.

Mr. BUTLER. Will the gentleman permit me to ask him a question?

Mr. CRUMPACKER. Certainly.

Mr. BUTLER. I ask him if there was any authority by the Executive to authorize these expenses to be paid?

Mr. CRUMPACKER. I do not know of any express authority except it was the general authority the Executive has to obtain information in such proper channels as he may deem advisable.

Mr. BUTLER. Was there any implied authority?

Mr. CRUMPACKER. Why, there may be no authority, but there is no law prohibiting the President from seeking information through any proper channels.

Mr. TAWNEY. In reply to the gentleman, I want to call his attention to the fact that he predicates his whole argument upon the statement that this law relates to service "for the Government." Now, the gentleman from Indiana is not entirely correct. I am not inclined to give this statute a technical construction for the purpose of finding a basis upon which to refuse this appropriation. I have endeavored to give the statute the most liberal construction possible. I want to call the attention of the House to the fact that there is no language in this law which will justify the construction of the gentleman from Indiana that these services were personal to the Executive and are therefore not prohibited by this statute. The language is:

> Nor shall any Department or any officer of the Government accept voluntary service for the Government or employ personal services in excess of that authorized by law, with the exception of certain emergency involving loss of life or the property of the Government.

If these services were not rendered for the Government, why are we asked to pay for them?

Mr. CRUMPACKER. These all constitute services for the Government.

Mr. TAWNEY. Services for the Government or personal service.

The gentleman from New York stated the expenses of this Commission have been paid. My information is to the effect that the expenses of this Commission have not only not been paid, but can not be paid under section 3681, which reads as follows:

> No accounting or disbursing officer of the Government shall allow or pay any account or charge whatever, growing out of, or in any way connected with, any commission or inquiry, except courts-martial or courts of inquiry in the military or naval service of the United States, until special appropriations shall have been made by law to pay such accounts and charges. This section, however, shall not extend to the contingent fund connected with the foreign intercourse of the Government, placed at the disposal of the President.

Now, here is an express statute which prohibits the accounting officers of the Government from paying any claim made by or on account of any commission, with only one exception, and that exception relates to the contingent fund connected with the foreign intercourse of the Government.

Now I yield to the gentleman from Illinois.

Mr. MADDEN. The gentleman from New York stated a few minutes ago that payment had been made out of the Public Treasury to members of this Inland Waterways Commission and that he and other members of the committee, if I understood him correctly, were unable to ascertain the fund from which payment had been made.

There is no evidence, is there, to show that any payment whatever has been made to any member of this Commission from any fund whatever?

Mr. TAWNEY. No; there is no evidence to show it, and under this statute which I have just read I do not think any payments could possibly pass the auditing officers of the Government.

Mr. MADDEN. So far as the Appropriations Committee knows, no member of the Commission has made claim for any payment except the gentleman whose bill is now before the House.

Mr. TAWNEY. That is true, Mr. Speaker.

Mr. FITZGERALD. The gentleman said that I had stated that some of the expenses of this Commission had been paid out of the public funds.

Mr. TAWNEY. I so understood the gentleman to say.

Mr. FITZGERALD. The gentleman is evidently aware of the source from which I had that information. Has he since investigated and ascertained that no payment was made?

Mr. TAWNEY. I have since investigated, and find that no expense of that Commission has been paid from any appropriation whatever. The information upon which I made the statement to the gentleman from New York on yesterday was contained in a letter which indicated that those expenses had been paid; but upon further inquiry I find that the matter in the letter that I spoke of referred to the other members of the Commission receiving compensation for their services, and not expenses.

Mr. FITZGERALD. I should like to have it understood that my statement was inadvertently based upon that information.

Mr. TAWNEY. Yes.

Mr. MANN. The gentleman stated a while ago that he thought all the members of this Commission were officeholders of some sort, and drawing salaries, except Senator BANKHEAD.

Mr. TAWNEY. I have been so informed.

Mr. MANN. Does the gentleman know who the secretary of the Commission is?

Mr. TAWNEY. I do not.

Mr. MANN. Doctor McGee, I believe, is the secretary of that Commission. If he is holding any office under the Government it is a new thing to me.

Mr. HUMPHREYS of Mississippi. He is Chief of the Bureau of Ethnology, is he not?

Mr. MANN. The gentleman from Mississippi says he is Chief of the Bureau of Ethnology. He has not been connected with that bureau for years, and never was the chief. He is living in St. Louis, or was until he came to Washington this winter, and I only asked for the purpose of ascertaining whether, in order to pay him, he had been given some other position.

Mr. TAWNEY. I can not enlighten the gentleman from Illinois on that. As this matter came up on the Senate amendment, I had no opportunity to know, until conferring with the other branch of the legislative department as to what the facts were in regard to the personnel of the Commission; but I am now informed that the gentleman from Alabama [Mr. BANKHEAD] was the only member of the Commission who was not an officer of the Government during the time that that Commission was serving. The officers of the Commission, including the secretary, I do not know, and I do not know whether he is connected with the Government at all or not, or whether he received any compensation.

Mr. UNDERWOOD. Will the gentleman from Minnesota yield to me ten minutes?

Mr. TAWNEY. I yield ten minutes to the gentleman from Alabama.

Mr. UNDERWOOD. Mr. Speaker, I desire the attention of the House, because I think this report puts my former colleague [Mr. BANKHEAD] in a wrong position. I do not think that the report shows the true position he took in reference to this matter, and I do not think this House ought to misjudge one of the old Members of this House and a former colleague of many of us.

I want to say to the gentleman from Minnesota that I was a member of his committee, a member of the Deficiency subcommittee when the statute that he refers to was written. There is not any question in the world, there is no doubt whatever, that that statute was not written to limit the executive authority of the President of the United States, because this body has no power to limit his executive functions. He derives his powers from the Constitution of the United States and not from us, and he has the power to appoint commissions or agents to investigate for him great public matters whenever he desires to do so. As to the question of pay, as to whether they shall serve for nothing or whether we shall pay them after he appoints them, that is another question, and I do not dispute at all that this House has the right to reject the payment of this claim if it desires to do so.

But that the appointment of the Inland Waterways Commission was violation of law is another question. The statute that the gentleman refers to was to prevent the executive officers of this Government from creating deficiencies in their Departments and for no other purpose. I was on the committee when the law was written, aided in its writing, and aided in its passage, and I know for what purpose it was created. It was created purely for the purpose of preventing an executive officer of this Government from running in debt in his Department and then calling on Congress to pay that indebtedness, and had no reference whatever to the President of the United States.

Now, I ask the House to consider the facts as to the appointment of Mr. BANKHEAD on this Commission. The President of the United States conceiving that it was his duty as Chief Magistrate of this land to get behind the great public sentiment in the United States with reference to building up and develop-

ing the waterways of the country, concluded that it was wise to appoint a commission to investigate and lay the facts as to the development of the waterways of the United States before him. He desired able and experienced men to represent him on that Commission, and in the selection of the Commission he selected every man an officer of the United States except one. Every man that he named on that Commission was receiving pay from the Federal Government except Mr. BANKHEAD, Mr. BANKHEAD was not an applicant for that position. The appointment sought him and not he the appointment. He was out of Congress, his Senatorial term had not begun, and he informed me, and I know it to be true that he informed the President when he was offered the appointment on the commission that he could not afford to take this place without compensation. The President told him that he would recommend to Congress—not that he would pay it, he could not pay it and he knew he could not pay it—but he told him that he would recommend to Congress that he be paid a reasonable compensation for his services and expenses on that commission. It was with that understanding that Mr. BANKHEAD accepted service on this commission, giving his time to the Government.

Mark you, it was not for one moment the understanding that the President of the United States had a right to make a contract that would bind this House, and he did not do it. But the President of the United States asked Mr. BANKHEAD to serve on this commission because Mr. BANKHEAD had been the senior Democratic member of the River and Harbor Committee, because he had been a man of lifelong experience in this work, because he wanted the services of Mr. BANKHEAD, and Mr. BANKHEAD told him that under his financial condition he could not afford to take the time to devote to that service without compensation. Now, it is up to the House, not to pay a legal debt—nobody contends that it is a legal obligation, but the Government has received his services, and it has been the precedent for many years to pay these commissions. You paid for the strike commission, you have paid one hundred obligations contracted by the Executive before without him consulting you in advance. You have got a right to pay this if you want to, and I just want this House to understand that the President of the United States asked this man to serve, that Mr. BANKHEAD did not ask for the appointment, and the President said that he would recommend to the House to pay the bill. You have a right to pay it if you want to, and as for myself I shall vote to pay it under the circumstances.

Mr. TAWNEY. Mr. Speaker, I yield ten minutes to the gentleman from Ohio [Mr. KEIFER].

Mr. KEIFER. Mr. Speaker, before proceeding I want to call the attention of the chairman of the Committee on Appropriations to the amendments that are disagreed to. I want to find out what the ground was upon which they refused to agree to the Senate amendment which appropriates money for the purpose of paying the expenses of prosecuting Hyde and others, whether the conference committee refused on the ground that there shall be no money appropriated for this purpose or whether upon the ground that it shall be appropriated to be paid for in part by the District of Columbia.

Mr. TAWNEY. I will say to the gentleman from Ohio that the conferees on the part of the House declined to recede and concur in the Senate amendment for the reason that when I asked for unanimous consent that the Senate amendments to the urgent deficiency bill be taken from the Speaker's table and sent to conference I was asked if the House would be given an opportunity, if consent was granted, to vote for this proposition, and I promised the House that an opportunity would be given, and in order to keep faith with the House we brought the proposition back here for the House to dispose of as it sees fit.

Mr. KEIFER. I am under the impression that the House bill provided for substantially the same thing as is provided for in the Senate amendment.

Mr. TAWNEY. Exactly the same thing.

Mr. KEIFER. If it is the same proposition as in Senate amendment 11 upon which the conferees of the two Houses are unable to agree, I do not understand why the Senate did not agree to the House proposition.

Mr. TAWNEY. The House proposition was not before the Senate for the reason that it went out on a point of order.

Mr. KEIFER. Then I do not understand why the House conferees did not agree to the Senate proposition, which is substantially the same as embodied in the original bill reported by the Committee on Appropriations.

Mr. TAWNEY. Because the House conferees promised that they would not agree to it, but would bring it back here to the House.

Mr. KEIFER. I do not know to whom the promise was made.

Mr. TAWNEY. It was made to the House.

Mr. LIVINGSTON. I want to say that one of the conferees objected to agreeing to the Senate amendment for the reason that we have had additional information since the bill was before the House.

In other words, if you will pardon me, this whole case went before Judge Stafford last spring, and the Government expended $25,000 in bringing Government witnesses here, and Judge Stafford ruled that this case could not be tried in the city of Washington and must be tried in the State of California, where the crime was committed. We had that additional information.

Mr. KEIFER. Mr. Speaker, I am always willing to be interrupted by the gentleman from Georgia [Mr. LIVINGSTON], but he is talking about another proposition or another case.

Mr. LIVINGSTON. That is the Hyde-Benson case that the gentleman is talking about.

Mr. KEIFER. He is talking about other cases. I understand that indictments have been found under the direction of the Attorney-General of the United States in the courts of the District of Columbia against Hyde, Dimond, Benson, and Schneider.

Mr. LIVINGSTON. That is the case I refer to.

Mr. KEIFER. Well, the gentleman is referring to cases that have never been tried by the judge he refers to, because they are still pending in the United States court in the District of Columbia. The question, Mr. Speaker, that seems to trouble the gentleman is whether or not we should not sit here as a high court of justice to determine in advance whether the Attorney-General of the United States and the Federal court of this District would be right if they held that the venue for the trial of these persons was in the District of Columbia. I understand the proposition is, and this is the claim made by the defendants' attorneys, that the defendants ought not to be put on trial so for from home. If we do not make this appropriation they won't be put on trial here, or anywhere. They claim that the venue is somewhere else. As a general proposition, in every criminal case there is but one venue, or but one place of jurisdiction, and that is where the crime was committed, and the Attorney-General and those that have had these cases in charge have procured indictments in the United States courts in the District of Columbia. They desire to put these indicted persons on trial in the District of Columbia, where they believe the court has jurisdiction. Then the question of venue will be tried and not disposed of, as the gentleman from Georgia suggests, by somebody, as here, injecting the suggestion that there is no venue at all. It is absurd to ask us to sit here and in advance determine for the court and the Attorney-General and everybody else that the court in the District of Columbia has no jurisdiction to try the case at all, because the crime, in our opinion, was committed somewhere else. This is unusual. The question of venue probably can not be raised upon the indictments in these cases by demurrer or motion, but we will have to depend upon the testimony taken before the judge upon the trial of these defendants, when it will develop whether or not the essential element of the crime was committed in this District or somewhere else. Probably it must depend entirely upon the testimony on the trial to a court and jury, and we are asked to sit in judgment now and say:

> Oh, no; it is our humble judgment that there is no venue; some man said so, and we ought to acquit these men on the floor of the House of Representatives on the indictments without a trial, no matter whether they are guilty or not.

That is the proposition that we are confronting now. The original appropriation bill was right. This is right. We ought to appropriate the necessary money to carry on these prosecutions. If they fail, they will be like other criminal prosecutions that are failing in all the courts, State and Federal, all over the land. I do not know; I can not myself sit in judgment upon the question now and determine whether there is venue in the District of Columbia or somewhere else. This is not the place to take the testimony on the question of where the crime was committed, if one was committed. If it was alleged to be in California we would have the same proposition, that there is no venue out there, and in no case would there be any prosecution anywhere.

Mr. LIVINGSTON. Mr. Speaker, I would ask the gentleman what he has to say about the constitutional right that the defendants have to be tried where the crime was committed?

Mr. KEIFER. Everybody agrees with that. That does not follow the constitutional right alone, but it belongs to the legislation of the land. That rule is older than the Constitution of the United States. It had its foundation in the common law and the laws of England, and we are not determining that question; but the gentlemen object, some of them, to this appro-

priation because the court might find that the constitutional right to be tried was in the District of Columbia. We know if the court on the trial should find that the crime was not committed in the District of Columbia that the venue will fail and jurisdiction will fail, and for the purposes of the trial the defendants will be acquitted.

Mr. LIVINGSTON. If the gentleman will pardon me for one more suggestion——

Mr. KEIFER. Certainly.

Mr. LIVINGSTON. The United States Government is perfectly able out of her immense resources to pay the expenses of the prosecution, but who will pay the thousands and thousands of dollars unnecessarily brought upon the defendants by bringing their witnesses all the way from California? Who is going to take care of that?

Mr. KEIFER. I understand the proposition of the gentleman from Georgia [Mr. LIVINGSTON] is this, that when this body meets to make appropriations to carry on criminal trials in Federal courts, it ought to first inquire whether it will not be a hardship upon the indicted party to try him at all.

Mr. LIVINGSTON. No; the gentleman misstates the position.

Mr. KEIFER. That is the proposition the gentleman claims that we are brought here to meet and decide.

Mr. LIVINGSTON. The gentleman misstates the position. The first thing to inquire is this, Where is the man's right under the Constitution to be tried? If it is in California and you undertake to force it into this District, then the question of expenses comes up and properly comes up.

Mr. KEIFER. We come back, Mr. Speaker, to the same question we started with, and that is whether or not, having found indictments in the District of Columbia Federal court, which on their face, I presume, show that the proper venue is here, the indicted parties must be brought here and tried as is usual.

Mr. TAWNEY. Mr. Speaker, I just want to say one word in answer to the gentleman from Alabama [Mr. UNDERWOOD] on the amendment, which I ask the House to further insist upon its disagreement to. This matter rises far above any personal consideration of his colleague or any personal desire to compensate him for the time that he served on this Commission. If it was a matter of personal favor to his former colleague [Mr. BANKHEAD] I would be as willing as any other man to extend any favor that I possibly could; but under the circumstances, Mr. Speaker, the services of the gentleman from Alabama upon this Commission were without authority of law, and for Congress to appropriate this money in this instance would be virtually acquiescing in the unauthorized creation of this Commission.

Mr. UNDERWOOD. Will the gentleman allow me to ask him a question?

Mr. TAWNEY. Yes, sir.

Mr. UNDERWOOD. Does the gentleman see any distinction between the creation of this Commission and the creation of the Strike Commission some years ago?

Mr. TAWNEY. I do not recall all the circumstances under which the Strike Commission was created.

Mr. UNDERWOOD. But I mean as a matter of law and——

Mr. TAWNEY. Nor is it clear to my mind that there is any analogy whatever between the Strike Commission and this Inland Waterways Commission. When that Commission was appointed human life and property were involved, while the appointment of this Commission involved nothing of the kind. With all due respect to the gentleman from Indiana [Mr. CRUMPACKER], their appointment was official, not personal. The services of this Inland Waterways Commission were rendered for the Government; they were to render services for the Government, and in the other instance the Commission was appointed voluntarily for the purpose of settling a dispute between certain industries and their employees which threatened the most serious consequences to life and property.

Mr. UNDERWOOD. But both Commissions were appointed for the purpose of obtaining information for the President of the United States, and he so stated in appointing them, and, if I am not mistaken, the gentleman from Minnesota voted as I did. I voted with him to pay the Strike Commission for their services and expenses rendered.

Mr. TAWNEY. That proposition is not at all analogous to the one we are considering. I ask now, Mr. Speaker, for a vote on my motion.

Mr. PRINCE. Mr. Speaker——

Mr. TAWNEY. Mr. Speaker, I yield to the gentleman from Illinois.

Mr. PRINCE. Is not there a contingent fund that the Executive has at his disposal out of which this money can be paid, as it was in the nature of advice or information obtained by the Executive for the good of the Government?

Mr. TAWNEY. I know of none and I know of no way whereby the expenditure, even if there was a contingent fund, could be paid under section 3681, which prohibits the accounting officers from passing any accounts on account of expenses incurred by or on account of any commission.

Mr. MANN. Will the gentleman yield?

Mr. TAWNEY. How much time have I remaining, Mr. Speaker?

The SPEAKER. Six minutes.

Mr. TAWNEY. I yield three minutes to the gentleman from Illinois [Mr. MANN].

Mr. MANN. Mr. Speaker, the amendment covering the Hyde-Benson case proposed by the Senate is the item which went out of the bill in the House on the point of order. Briefly, it presents two propositions: First, as to whether Congress shall depart from its present established custom, that the United States and District shall each pay half the expense of the courts of the District, and for the United States to pay the entire expense for the trial of this case. I can see no reason given why, when the United States at large pays half the expense of the trial of the will cases, the real estate cases, the ordinary chancery cases, the justice of the peace, as it were, cases in the courts of the District, where nine-tenths of the business is local—I can see no reason why when we pay half of their local court expenses they should not pay half the expense in this case. That is one aspect of the proposition. The other is this: I trust that no Member of this House who is as poor as I am will ever be called upon to be carried 3,000 miles across the country to be tried on a conspiracy charge, where the venue might be laid in perhaps a half dozen places, and have the Government pour out its treasure to bring witnesses across the continent when the party accused has no money with which to bring his witnesses. The Government could have tried the case in the District of Columbia or in the United States courts in California——

Mr. KEIFER. How do you know?

Mr. MANN. The man has no discretion in the matter. If he is tried here the Government pours out a fund of $60,000. For what? To bring the witnesses across the continent. A few years ago many of us thought that the great State of Kentucky was a little bit oppressive when it appropriated $100,000 to aid in the prosecution of the assassin of a governor of that State, but the cause there was much more extreme than it is here when it is proposed to appropriate $60,000 to bring the witnesses of the Government across the continent and leave the poor defendants to bear the expenses for their own witnesses. It is not justice. It is not the proper way to try cases. It were better that these men, who may be guilty, should go free than that the doctrine should be established that the great Government of the United States should have the opportunity to convict a man because he was too poor to bring his witnesses to court.

Mr. NEEDHAM. Will the gentleman yield for an interruption?

Mr. MANN. Certainly.

Mr. NEEDHAM. Can not he apply to the judge to pay his expenses?

Mr. MANN. He can not, as I understand it.

Mr. NEEDHAM. The United States district attorney told me this morning that he could if he made a showing that he was unable to do it.

Mr. MANN. That is a case in the District, but that case, as I understand it, does not apply to this case at all.

Mr. TAWNEY. Mr. Speaker, I now ask for a vote, unless a separate vote is demanded.

Mr. UNDERWOOD. Mr. Speaker, I demand a separate vote on amendment No. 5, and move to recede and concur in the Senate amendment.

The SPEAKER. The Chair is not clear whether the gentleman from Minnesota [Mr. TAWNEY] demanded the previous question.

Mr. TAWNEY. I did not demand the previous question.

The SPEAKER. The gentleman from Alabama [Mr. UNDERWOOD] demands a separate vote on amendment No. 5. The Clerk will report the amendment.

Mr. TAWNEY. On that, Mr. Speaker, I demand the previous question.

Mr. UNDERWOOD. Mr. Speaker, a parliamentary inquiry. I ask if it is not in order, even if the previous question is demanded, to move to recede and concur, as that has precedence over the motion to nonconcur?

Mr. TAWNEY. I am not trying to cut out the gentleman from making that motion.

Mr. UNDERWOOD. Then I have no objection.

Mr. TAWNEY. I understand if the previous question is ordered that he can move to recede and concur.

The SPEAKER. The Chair will say that there was a decision of that kind made by Speaker Reed upon a war measure, founded upon the Digest as it was at that time, and the Digest so stated. But subsequent examination of the authority referred to showed that precedent did not sustain the Digest. Since that time the Chair will state that the ruling has perhaps been followed, but it is not necessary for the Chair to intimate what the ruling might be under those conditions, because the question does not arise. The gentleman from Minnesota [Mr. TAWNEY] says that he has no desire to cut out the motion, and perhaps the previous question would cover both motions.

Mr. UNDERWOOD. Then, if the gentleman withdraws the motion to allow me to make the other motion, I move to recede and concur in amendment No. 5.

Mr. TAWNEY. On that I ask the previous question.

The SPEAKER. That would take precedence of the other, as it brings the two bodies together if the motion should be agreed to at this stage, the previous question not having been ordered. The gentleman from Alabama [Mr. UNDERWOOD] moves that the House do recede from its disagreement with the Senate as to amendment No. 5 and concur in the amendment.

Mr. TAWNEY. Mr. Speaker, that is the amendment, I will say for the information of the House, appropriating $1,875 for the services of Mr. BANKHEAD.

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

No. 5. Page 17, after line 22, insert:
"To pay John H. Bankhead for his services as a member of the Inland Waterways Commission, from March 14 to June 18, 1907, $1,875."

The SPEAKER. The question is on the motion of the gentleman from Alabama, that the House do recede from its disagreement and concur in the amendment which has just been read.

The question was taken, and the Speaker announced that the noes seemed to have it.

Mr. UNDERWOOD. I ask for a division.

The House divided, and there were—ayes 56, noes 101.

So the motion was rejected.

The SPEAKER. The question is on the motion of the gentleman from Minnesota, to further insist on disagreement to amendment No. 5.

The question was taken, and the Speaker announced that the ayes seemed to have it.

Mr. MANN. I ask for a division on that.

The House divided, and there were—ayes 117, noes 12.

So the House determined to further insist on its disagreement.

Mr. NEEDHAM. Mr. Speaker, I move that the House recede from its disagreement and concur in amendment No. 11.

The SPEAKER. The gentleman asks a separate vote on amendment No. 11. The Clerk will report the amendment.

The Clerk read as follows:

All expenses that may be incurred and otherwise chargeable to the United States and District of Columbia in the approaching trial of the case of the United States against Hyde, Dimond, Benson, and Schneider in the District of Columbia shall be chargeable wholly to the United States and be paid from the respective appropriations made for expenses of United States courts out of the Treasury.

The SPEAKER. What is the motion?

Mr. NEEDHAM. My motion is to recede and concur.

Mr. TAWNEY. My motion is that the House further insist on its disagreement.

The SPEAKER. The motion of the gentleman from California takes precedence.

Mr. NEEDHAM. Is not that debatable? I desire to discuss the motion.

The SPEAKER. The gentleman from Minnesota is recognized and has control of the time. Does he yield to the gentleman?

Mr. TAWNEY. I yielded to the gentleman from California to make that motion. If he desires to discuss it for five minutes, I will yield him five minutes.

Mr. NEEDHAM. Mr. Speaker, I called at the office of the United States district attorney for the District of Columbia this morning and obtained from him a statement in regard to this case, which I will ask the Clerk to read in my time.

The Clerk read as follows:

The indictment in the Hyde-Benson case was returned in the District of Columbia, for the reason that the proof of acts by the defendants in furtherance of the conspiracy charged relates chiefly to this District and shows that the conspiracy was in continuous existence and active operation in this District during the entire period covered by the indictment. This is not true as to any other judicial district.

Selections under the act of June 4, 1897, while required to be filed originally in the land office of the land district where the selected lands were situated, had to be forwarded by the local land officers to the General Land Office in this District for consideration and action. Here only could the selections be examined and approved for patent, and here only could the patents issue. Here it was therefore, by bribery of Government officials in the General Land Office, and by other acts in part apparently lawful and in part unlawful and criminal, that the most important acts in furtherance of the conspiracy were performed, and were continuously performed for more than three years. One of the defendants remained in this city in the performance of such acts for more than a year, and another visited the city frequently during the time and here performed similar acts.

The acts done by the defendants elsewhere than in this District, within the period covered by the indictment, related chiefly to the filing of the selection applications and required proofs in the numerous local land offices throughout the public-land States—a few in one land district, a few in another, and a few in another, and so on, covering tracts of land in nearly every land district of the United States. The ultimate object of all such acts, however, was the securing of patents from the General Land Office of this District for the selected lands, and here it was that the defendants were moved to and did put in their most criminal and most effective work. The evidence of this is entirely clear, whereas it is not clear whether the selection applications and proofs, as to most of the lands covered by the indictment, were filed in the aforesaid local land offices by one or more of the defendants, or by innocent purchasers from them of the supposed and apparent right of selection.

As a general rule, the supposed right of selection was sold by the defendants to other persons before the selection applications would be filed, and in very many, if not in most, instances the purchaser would himself file the selection application in the local land office, though usually in the name of one of the defendants or in the name of some one acting for them. This rendered it exceedingly difficult, if not absolutely impossible, to fix the venue, with any degree of certainty as to the proof, elsewhere than in the District of Columbia.

The investigation disclosed very little correspondence or other transactions as between the defendants and the local land officers throughout the country, and such as was secured was of doubtful sufficiency upon which to base jurisdiction.

The evidence disclosed very few, if any, acts in furtherance of the conspiracy done in the northern district of California within the period of the statute of limitations, which fact rendered it wholly inadvisable to undertake to sustain an indictment in that district. The same is true of the district of Oregon.

Upon the whole case the officers in charge of the investigation deemed the course determined upon to be not only wise and proper, but the only course that could be pursued with any degree of safety to the interests of the Government.

Mr. NEEDHAM. Mr. Speaker, that statement shows that this conspiracy was to obtain title to public lands, or the right to select public lands in every public-land State in the United States, and this conspiracy was entered into and carried out in the city of Washington. Now, the practical question before the House is, Will we give the Government sufficient money to bring these defendants to trial? There is not sufficient in the general fund of the District, and the United States Government, and unless Congress appropriates the money, these defendants will come and demand an immediate trial, knowing that the law officers have not the money with which to try them, and they would thus be able to escape trial.

This is one of the most gigantic conspiracies, in my judgment, in all the land-fraud cases, and it is in the interest of public justice that Congress should give sufficient money to try this case. I do not believe there is anything in the contention of the gentleman from Illinois [Mr. MANN]. The United States district attorney informed me this morning, unless I misunderstood him, that if these defendants should come into court and say that they were not able to obtain their witnesses, by reason of their poverty, they could have the compulsory process of the Government. If I am correctly informed, Hyde and Benson are wealthy men and entirely able to pay any expense to which they are put in these cases.

Mr. Speaker, unless this appropriation is given there will be a great miscarriage of public justice, in my judgment.

Mr. PAYNE. Will the gentleman allow me to ask him a question? I have heard it stated—I do not know how it is—that if these cases are not tried in the District of Columbia at present, the statute of limitations will run, with the cases to be brought in other States.

Mr. NEEDHAM. My understanding is that there is no probability of their trial, except under the present indictment.

Mr. HAYES. I will ask my colleague whether or not this case referred to in this bill is the same case that went to the Supreme Court a little time ago on a writ of habeas corpus, and reported in volume 199 of the United States Reports?

Mr. NEEDHAM. I understood they did.

Mr. HAYES. Well, Mr. Speaker, then it occurs to me that it is extremely doubtful, according to the language of this decision, which I have before me, whether these defendants could ever be convicted. It appears to be reasonably conclusive from the reading of this opinion that they could never be convicted, and therefore the appropriation to bring witnesses here would be a waste of public money.

Mr. NEEDHAM. That is a matter for the Department of Justice to consider.

Mr. HAYES. Now, the Supreme Court has made a decision——

Mr. LITTLEFIELD. On what ground does the gentleman make that statement?

Mr. NEEDHAM. My colleague refers to a part of the dissenting opinion of Justice Peckham, making an insinuation——

Mr. HAYES. If the gentleman will permit me——

Mr. NEEDHAM. As I understand it, my colleague refers to a part of the dissenting opinion of Mr. Justice Peckham to the effect that that might be the case; but the majority opinion of the court, as I understand it, carries no such insinuation; and in answer to my colleague I want to say that that is a matter for the Department of Justice to determine, and it is not for Congress to withhold a sufficient fund for trial.

Mr. HAYES. Will the gentleman from Minnesota yield to me a few minutes?

Mr. TAWNEY. I yield three minutes to the gentleman from California.

Mr. HAYES. Mr. Speaker, I have no doubt that the statement of my colleague is correct in regard to these men. I believe that they are fully as guilty—some of them, at least—as he claims, and yet I am a little in doubt as to whether this House ought to make this appropriation or ought to recede from its position as to this amendment. These cases are cases of conspiracy to defraud the Government of the United States, and from this opinion of the Supreme Court, which I will not undertake to read to the House, I conclude that there is no question but what this conspiracy was hatched in the State of California or in the State of Oregon and not in the city of Washington, and that one overt act only was committed here. Now, the Supreme Court of the United States has repeatedly held that in conspiracy cases of this kind, where the overt act occurred does not matter, that the venue would lie where the conspiracy was formed, and that the overt act might be committed in Canada, in England, on the high seas, or any place—that that does not affect it.

This case came before the Supreme Court on a writ of habeas corpus, and a majority of the court refused to look into the evidence upon which the indictment was based to determine whether or not there was probable cause for bringing this indictment. Mr. Justice Peckham, with whom concurred Mr. Justice White and Mr. Justice McKenna, maintained that they should go behind the indictment and look into the evidence, and he apparently did go behind the indictment and look at the evidence.

Mr. LITTLEFIELD. What was the question raised before the court in this case?

Mr. HAYES. The question was that there was not probable cause that the offense charged had been committed. It was claimed that the evidence did not show any offense to have been committed in the District of Columbia.

Mr. LITTLEFIELD. That is, that the indictment ought not to have been found on the facts?

Mr. HAYES. Yes; that there was no proof that any conspiracy was ever formed in the District of Columbia, and the court held that they could not go behind the indictment on a writ of habeas corpus to determine that fact. That was the holding of the majority of the court, but Mr. Justice Peckham claimed that they should go behind it. In delivering his opinion he uses this language, which I beg to read to the House:

The right—

To have this determined—

is none the less when the want of probable cause rests upon the conclusive evidence of the absence of the defendants from the District of Columbia at the time when the indictment alleges the conspiracy was formed in such District. If defendants were not then there, they could not be guilty of the crime charged in the indictment. This case is an extreme illustration of the very great hardship involved in sending a man 3,000 miles across the continent, from California or Oregon to this District for trial, where he has to bring his witnesses, and where on such trial it will appear that the court must direct an acquittal because the averment of the formation of the conspiracy in Washington, D. C., is shown to be false, to a demonstration.

Mr. NEEDHAM. That is from the dissenting opinion?

Mr. HAYES. Yes; but it is from the men who investigated the evidence upon which the indictment was formed.

Mr. LITTLEFIELD. And your point is that the majority of the court did not discuss the evidence at all?

Mr. HAYES. Did not discuss the evidence at all; refused to discuss it. Therefore it must be apparent, it seems to me, that an appropriation of this kind to bring all these witnesses here will be a waste of public money if Mr. Justice Peckham is correct.

Mr. TAWNEY. Will the gentleman from California permit a question?

Mr. HAYES. Certainly.

Mr. TAWNEY. Can the gentleman or any other lawyer in this House suggest how the question of jurisdiction can be authorized to be brought before the Supreme Court of the United States for determination before trial in order to determine the question of jurisdiction in advance of the trial, and therefore save the expense of the trial both to the Government and to the defendants? If there was any way whereby that could be done, it could be agreed to in conference, and I would be perfectly willing to do it. In view of the decision of the Supreme Court I admit that it is practically impossible to authorize that investigation by the Supreme Court into the facts for the purpose of determining the question of jurisdiction without having the evidence before it.

Mr. KEIFER. Mr. Speaker, I want to say to the chairman that the very case the gentleman from California [Mr. HAYES] cites answers the inquiry of the chairman of the Committee on Appropriations. It holds that there is no way to determine in advance of the trial the question of venue or jurisdiction; that the court can not go behind the indictment. That is the whole question we are dealing with here.

Mr. PAYNE. If the gentleman will allow me.

Mr. HAYES. I will yield to the gentleman.

Mr. PAYNE. There has grown up in our State in recent years a practice allowed by the court in criminal procedure for the court to order the minutes before the grand jury of all the testimony taken to be reported to the court for the use of the defendant, and on those minutes a motion is made to quash the indictment because of the insufficiency of the evidence. Now, whether that suggestion will help the conferees in any way I do not know. We have that practice, which has grown up out of the code of criminal procedure in our State. There is a stenographer before the grand jury, and all the evidence is taken down, and this is frequently resorted to. The attorney for the prisoner asks for an inspection of the minutes of the evidence before the grand jury, and that is brought into court, and if it is deemed insufficient to sustain an indictment a motion is made in court to quash the indictment for that reason.

Mr. KEIFER. That is in the gentleman's own State; does he know of any other State in the Union that has that procedure?

Mr. PAYNE. I do not know; we have had it for the last five or six years.

Mr. HAYES. Mr. Speaker, I am not enough of a lawyer to frame, on the spur of the moment while on my feet, a statute or law that will meet the objection of the gentleman from Minnesota. I want to say that some of these men——

Mr. LITTLEFIELD. What is the date of the indictment?

Mr. HAYES. I have forgotten the date; it is something like 1904.

Mr. LITTLEFIELD. Is the gentleman familiar with the facts so that he can answer this question? Is this appropriation asked for this particular case or is it because the general appropriation for the maintenance of the court has been exhausted? Is it necessary for the trial of these cases that this particular appropriation should be made?

Mr. TAWNEY. I will say that the expenses incident to the trial of this case will create a deficiency of $60,000 in the general appropriation for the maintenance of the court.

Mr. LITTLEFIELD. That deficiency will be in the appropriations for the trial of criminal cases in the District?

Mr. TAWNEY. Yes; in so far as it is proposed to pay all the expenses incident to the trial of these cases out of the general fund appropriated for the judiciary, one-half of that expense is charged to the District of Columbia and the other half to the General Government.

Mr. LITTLEFIELD. And it is proposed in this case that the General Government shall pay it all?

Mr. TAWNEY. Yes.

Mr. LITTLEFIELD. In the other cases the Government pays one-half of the expense?

Mr. TAWNEY. Yes.

Mr. HAYES. I would like two minutes more.

Mr. TAWNEY. I will yield to the gentleman from California two minutes.

Mr. HAYES. Mr. Speaker, I desire to say that I do not think this appropriation will be effective to accomplish the purpose. That is why I doubt the wisdom of our receding in this case. Secondly, I recall that one of the principal objections that our forefathers urged against King George was that he took defendants across the water to be tried for offenses far away from their homes and far away from the places where the offenses were committed. I doubt whether this House wants to put itself on record as approving proceedings of this kind—taking defendants far away from the place where the offense was committed and bringing them here for trial at great expense to themselves and to the Government.

Mr. LITTLEFIELD. I would like to inquire whether indictments have been found elsewhere. It seems that offenses have been committed in other States under other jurisdictions.

Mr. HAYES. I am not able to state whether any indict-

ments for this particular offense have been found, but at least one of these defendants has been convicted in the State of California for some of these land frauds and has been sentenced, and other indictments are pending there, as I have stated.

Mr. LITTLEFIELD. For the same conspiracy?

Mr. HAYES. Perhaps not for the same conspiracy, but a conspiracy of the same sort. I have no doubt that if the evidence is sufficient they will be convicted in California just as easily as in Washington.

Mr. BUTLER. Mr. Speaker, I would like to ask a question. If this appropriation is not made, will the cases be tried in the District of Columbia?

Mr. HAYES. I do not know.

Mr. NEEDHAM. No; they can not try them without an appropriation or a provision of this kind.

Mr. TAWNEY. Mr. Speaker, I will yield two minutes to the gentleman from Illinois [Mr. MANN].

Mr. MANN. Mr. Speaker, I know next to nothing about these cases, and I know nothing about the defendants or their lawyers, but I have called to my mind very vividly a year or two ago what could be done in a case like this. A former Member of this House, who had been Commissioner of the Land Office after he had served a previous term in Congress, was indicted for these land frauds. After a long trial in the District here, where he was compelled to pay the expenses of his witnesses across the continent, he has gone back home acquitted, bankrupt, his property all gone, his position gone, and everything taken away from him by the Government which he had served; and, having been ruined financially on the trial of the case here in this District, he is to be tried at home upon some case of the same sort. His property and means were all taken away from him in obtaining an acquittal in the District here.

Mr. NEEDHAM. Let me ask the gentleman if that was not for destroying public records in the District of Columbia?

Mr. MANN. Oh, I am not saying whether that case had to be tried here or not. They could have tried him there. I am speaking of the result of the case—brought across the continent upon an indictment which, when presented to the jury with the evidence, was disposed of in a few minutes' time. Nobody pretended, after the evidence was in, that there was any case against Binger Hermann in the District of Columbia, but he has gone home, ruined financially, to endeavor to defend himself at home against new indictments, with the whole power of the National Treasury against him, and because of his case, so far as I am concerned, I never will knowingly vote to drag a man from California to be tried in the District of Columbia when the offense is such that it could be tried in California, where he lives, as well as in the District of Columbia. Perhaps the venue might lie in both places.

Mr. KEIFER. No; it is not possible, and never was.

Mr. MANN. Oh, well, in a conspiracy case——

Mr. KEIFER. A conspiracy case does not differ from any other.

Mr. MANN. If there is any venue anywhere in this case, it is in California, and not in the District of Columbia, if there is only one venue; but a conspiracy case may often be tried in a dozen different places.

Mr. BURLESON. But what about these cases being barred by the statute of limitation?

Mr. MANN. I know nothing about that.

Mr. TAWNEY. Mr. Speaker, I ask for a vote.

The SPEAKER. The question is on the motion of the gentleman from California, that the House recede from its disagreement to the Senate amendment and agree to the same.

The question was taken, and the motion was rejected.

Mr. TAWNEY. Mr. Speaker, I now ask for a vote on my motion, that the House do further insist upon its disagreement to the Senate amendment numbered 11.

The question was taken, and on a division (demanded by Mr. MANN) there were—ayes 110, noes 7.

So the motion was agreed to.

Mr. TAWNEY. Mr. Speaker, I now move that the House do further insist on its disagreement to Senate amendment No. 26.

The SPEAKER. The Clerk will report the amendment.

The Clerk again reported the amendment.

The SPEAKER. The question is on the motion of the gentleman from Minnesota.

The question was taken, and the motion was agreed to.

Mr. TAWNEY. Mr. Speaker, I move that the House ask for a further conference.

The motion was agreed to.

The Speaker appointed the following conferees on the part of the House: Mr. TAWNEY, Mr. VREELAND, and Mr. LIVINGSTON.

AMERICAN PASSPORTS IN RUSSIA.

Mr. CAPRON. Mr. Speaker, I am directed by the Committee on Foreign Affairs to report the following resolution, which I send to the desk and ask to have read:

The Clerk read as follows:

House resolution 223.

Resolved, That the Secretary of State be, and he hereby is, requested to communicate to this House, if not incompatible with the public interests, the correspondence relating to negotiations with the Russian Government concerning American passports since the adoption of the resolution by the House of Representatives relating to that subject on the 21st day of April, 1904; and also a copy of the circular letter issued by the Department of State to American citizens advising them that upon the Department receiving satisfactory information that they did not intend to go to Russian territory or that they had permission from the Russian Government to return, their application for passport would be reconsidered; and also a copy of the notice accompanying such letter issued by the Department of State, dated May 28, 1907.

Mr. CAPRON. Mr. Speaker, a member of the committee has expressed a desire to speak upon this resolution. I desire to withhold a motion to lay the resolution on the table pending an opportunity for the gentleman to address the House. I ask unanimous consent that twenty minutes on a side be allowed for a discussion of this motion which I propose to make, if it is necessary to have any side.

The SPEAKER. The gentleman from Rhode Island asks unanimous consent that twenty minutes be allowed on a side. Is there objection?

There was no objection.

The SPEAKER. The Chair will ask who is to control the time. Is the time to be in control of the gentleman from Rhode Island?

Mr. CAPRON. Yes.

The SPEAKER. Who is to control the twenty minutes on the other side?

Mr. HARRISON. I suppose, Mr. Speaker, that that time should be in my control.

Mr. CAPRON. I propose to yield twenty minutes to the gentleman from New York [Mr. HARRISON], after a word in explanation. In view of the fact, Mr. Speaker, that this resolution was referred to the Department of State and in its reply it is stated that it is not deemed compatible with the best interests at this time to communicate the subsequent correspondence with the Russian Government, the committee decided upon the motion which I shall subsequently make, to ask that it be laid on the table. I now yield twenty minutes to the gentleman from New York [Mr. HARRISON].

The SPEAKER. One moment. Whoever is recognized as being opposed to the motion which the gentleman gives notice he will make at the expiration of forty minutes, or so much time thereof as may be taken, is entitled to recognition in his own right. Does the gentleman yield his own time in addition to the other twenty minutes?

Mr. CAPRON. I do not so understand it.

The SPEAKER. Then the Chair will recognize in his own right the gentleman from New York.

Mr. CAPRON. Mr. Speaker, I reserve the balance of my time.

The SPEAKER. The gentleman from Rhode Island reserves the balance of his time.

Mr. HARRISON. Mr. Speaker, as a member of the Committee on Foreign Affairs, I protest against the tabling of this resolution. The resolution was introduced by my colleague from New York [Mr. GOLDFOGLE] and is an inquiry into the administration of the Department of State. It inquires, as has appeared from the Clerk's reading, first, as to the negotiations between our Government and the Government of Russia since the presentation of the resolution passed by the House of Representatives four years ago (April 21, 1904), and secondly, as to the issuance by the Department of State of a certain circular letter and circular accompanying it, which I will send to the Clerk's desk and ask to have read.

The SPEAKER. The Clerk will read.

The Clerk read as follows:

CITIZENSHIP.

DEPARTMENT OF STATE,
Washington, ———, 190–.

SIR: The Department is in receipt of an application for a passport of ——— ———, from which it appears that —— born in ———. Your attention is invited to the inclosed notice to former subjects of Russia who contemplate returning to that country, from which you will perceive that it is a punishable offense under Russian law for a Russian subject to obtain naturalization in any other country without the consent of the Russian Government. While this Government dissents from this requirement, it can not encourage American citizens whom it is likely to affect to place themselves within the sphere of its operation. *Upon receiving satisfactory information* that —— not intend to go to Russian territory, *or that —— permission from the Russian Gov-*

ernment to return, the application for a passport will be reconsidered immediately.

Returning the application, the certificate of naturalization, and the sum of $1 (——).

I am, sir, your obedient servant,

——— ———,

Chief, Bureau of Citizenship.

[Inclosure.]

RUSSIA.

Notice to American citizens formerly subjects of Russia who contemplate returning to that country.

A Russian subject who becomes a citizen of another country without the consent of the Russian Government commits an offense against Russian law, for which he is liable to arrest and punishment if he returns without previously obtaining the permission of the Russian Government.

This Government dissents from this provision of Russian law, but an American citizen formerly a subject of Russia who returns to that country places himself within the jurisdiction of Russian law and can not expect immunity from its operations.

Jews, whether they were formerly Russian subjects or not, are not admitted to Russia unless they obtain special permission in advance from the Russian Government, and this Department will not issue passports to former Russian subjects or to Jews who intend going to Russian territory unless it has assurance that the Russian Government will consent to their admission.

No one is admitted to Russia without a passport, which must be viséed, or indorsed, by a Russian diplomatic or consular representative.

ELIHU ROOT.

DEPARTMENT OF STATE, *Washington, May 28, 1907.*

Mr. HARRISON. Mr. Speaker, I wish to make it clear to the House that in this circular of May 28, 1907, the Department of State refuses the American passport not only to former subjects to Russia who have become naturalized American citizens, but also specifically to all Jews in the United States. Now, this is a most surprising and deplorable chapter of American diplomacy. Four years ago in the House of Representatives I had occasion to make an address upon the question of the dishonoring by Russia of the American passport. At that time, and largely as the result of the efforts of my colleague from New York [Mr. GOLDFOGLE], a resolution passed the House of Representatives requesting the President of the United States to renew negotiations with foreign Governments where discrimination is made between different classes of American citizens on account of their religious faith and to secure uniformity of treatment for all American citizens alike. This is a question which is very near to the hearts of the American people. It touches very closely upon our national honor, and it challenges that political equality forged for us in the blood and sweat of our revolutionary forefathers. But a short time ago it seemed that the question was about to be solved in a way satisfactory alike to our sentiment and our honor, but now our rights have been surrendered, our position has been abandoned and by the very persons appointed to defend it.

The question at issue was, and is, Shall the bearer of an American passport, holding in his hand the highest evidence of American citizenship, be halted, examined as to his religious faith, subjected to inquisition and humiliation, and, finally, because of that religious faith, denied admission to the boundaries of an Empire with which we are at peace and which is bound to us by the most solemn of treaties?

I call the attention of the House to the fact that the right of American citizens to travel and sojourn in Russia is not dependent upon the whims and fancies of an unhappy autocrat, but is based upon rights secured to us by the treaty of 1832 and approved by the enlightened conscience of the civilized world. That treaty gave to Americans and to Russians the reciprocal right to travel and sojourn in the territory of the other country and while there to have the same security and protection as natives of those countries. The right of Americans to enter Russia is therefore so plain that he who runs may read, and yet from the very language of this unequivocal clause of the treaty the Russians, with characteristic duplicity, have within this generation asserted a right to exclude a whole class of American citizens simply on account of their religious faith. They now claim that, having themselves adopted stern repressive laws against Hebrews in the Empire, long after the date of this treaty, the Americans of Jewish faith are not entitled to any more privileges in Russia than their own Jewish subjects. Against this intolerable assumption we have always protested with indignation. They dare not, of course, subject our citizen to the violence and persecution to which the Russian Jew is accustomed, so they shut the door in his face, the treaty notwithstanding.

At the time of the adoption of the treaty Jews in Russia were treated with great justice and consideration. Clouds of ignorance and superstition which had for centuries weighed upon the land had been dispelled by Catherine the Great. In her reign explicit toleration of all foreign religions was a fundamental policy of the Empire. Then came the partition of Poland, and through participation in that historic crime Russia suddenly acquired an enormous Jewish population. At first, and for many years, they were well treated. A wise and beneficent internal policy promoted the assimilation of the Jews into the Rusian Empire. Jewish agricultural colonies were founded. The Hebrews were urged to enter the universities as one of the best methods of breaking down Jewish exclusiveness. Foreign Jews of good repute were invited to domicile themselves in Russia and to purchase and lease real estate there. Down to 1860—for nearly eighty years—and especially under those enlightened rulers, Nicholas the First and Alexander the Liberator, the Jews were a favored people in Russia. In those days of liberality and toleration the treaty of 1832 was concluded with the United States. What warrant, then, is there for the assertion of the latter-day Russian bureaucrats that the right was conferred upon them under this treaty to harass, humiliate, and reject a whole class of American citizens whose sole crime, in their eyes, is a profound and conscientious belief in the Hebrew religion? Not one shade of reason, not one atom of truth or justice, can be found in such an argument. If any American statesman of 1832 had dared to advocate this treaty, believing that thereby he conferred upon a foreign government a contemptible pretext for a religious inquisition and discrimination among our citizens, he would have been swept out of public life with the scorn of his contemporaries. A course so undemocratic, so unrepublican, so un-American, so utterly subversive of our principles of government would have entitled him to national dishonor.

Russian officials, fifty years later, when a change of heart had come over them and fanatical despotism had obscured their reason, invented this pretext and clothed it with the dignity of an international argument. Russia has entirely reversed her attitude toward the Jews and inaugurated a reign of terror which has ground them between the millstones of poverty and despair. In place of generous and beneficent legislation, repression and secret police regulations reduced the Jews to misery. They have become the pity of the world. A tangled web of more than a thousand laws and police ordinances surrounds the Russian Jew to-day, so that he is hardly able to say whether he has any rights at all but the bare right to exist, and even of that he may be deprived.

Russian official stupidity has aroused a mighty and vexatious Jewish question. At first it began with legislation. In 1882 new laws prohibited Jews from buying or renting lands outside the cities and incorporated towns. Restrictions in 1891 were made more severe. To-day the entire Jewish population of Russia—some 5,000,000 of people are crowded into the cities of the southwestern border, in what is known as the "Pale." Here they live in the greatest distress and poverty. Education in Russian universities is practically denied them. Public and professional careers are almost closed to them. Freedom to move from town to town is withheld, and to crown all periodic "pogroms" or semiofficial massacres are instituted, in which whole regions within the Pale have been devastated with the sword, the rifle, and the torch. And the end is not yet. The antisemitic agitation is constantly going on, secretly encouraged by the authorities.

During the year 1906, according to official figures, 22,000 people were injured in the antisemitic outbreaks, most of which were promoted by Governmental agents. I wish to make it plain that this is a matter for which the Russian Government is entirely responsible. Left to himself, the Russian moujhik is amicable and able to live at perfect peace with his Jewish neighbors. It is now believed that the highest persons in the Empire are in sympathy with the movement.

At first, no doubt, some of the agitation was due to economic causes. The sobriety, self-denial, and foresight of the Israelite gave him an enormous advantage over the boozy, procrastinating Russian peasant. But restrictive regulations have now removed the question from the realm of economics. The Jew no longer under the law has the power of industrial competition. The recent massacres were inspired by official hatred and religious fanaticism. Writing in 1893, our minister to Russia, Mr. Andrew D. White, assigned as causes of agitation against the Jews:

> Vague inherited prejudices with myths and legends like those of the Middle Ages.

Mr. Speaker, I have gone into the distressing subject of the present condition of the Jew in Russia to contrast his unhappy lot to-day with his favorable situation in 1832, when this treaty was entered into. But much as they arouse our sympathy, our first efforts must be directed toward the protection of our own citizens. We have even interfered in the past in the internal administration of foreign countries on behalf of oppressed Jews. Shall we do less for our own citizens? Rus-

sian official fanaticism must not be visited upon Americans. Russian police regulations may not be invoked in contravention of treaty rights. Every American must be accorded the same reception at the borders of Russia. An American Jew must be able to say:

Keep me out at your peril, or keep out all Americans if you dare.

Their local laws must be subordinated to our treaty rights. Mr. Blaine, in defending these rights, wrote, on July 29, 1881, about the expulsion of American Jews from St. Petersburg:

The obligation of a treaty is supreme and the local law must yield. * * * Where a treaty creates a privilege for aliens in express terms it can not be limited by the operation of domestic law without a serious breach of the good faith which governs the intercourse of nations. * * * The Government of the United States concludes its treaties with foreign States for the equal protection of all classes of American citizens.

This vigorous and patriotic letter followed shortly after a resolution of the House of Representatives of June 10, 1879, protesting against discriminations against American Jews in Russia. It was followed some years later by a reference to the subject by President Cleveland in his annual message of December 2, 1895, and has been the cause of much correspondence ever since, notably by Secretary of State Hay, the greatest, perhaps, of all our foreign Secretaries since John Quincy Adams. Mr. Hay said in his letter to Mr. William Wilson, July 17, 1902, that the United States—

can admit no such discrimination amongst its own citizens and can never assent that a foreign State of its own volition can apply a religious test to debar any American citizen from the favor due all.

The culminating point in all these negotiations was reached in 1904, when the House of Representatives adopted the resolution referred to at the beginning of my remarks, requesting President Roosevelt to renew negotiations with a view to putting an end to this obnoxious practice.

That resolution was transmitted to the Russian Government by Ambassador McCormick, and his letter of transmittal is so clear, so forcible, and so manly that I do not hesitate to pronounce it the most American of all this chapter of diplomacy. Mr. McCormick wrote:

This resolution voices not only the feelings of the people, but also a principle which lies at the foundation of our Government. It is for this reason that the question has been, is, and always will be a live question with us and liable to become acute and be brought forward at some time in such a way as to seriously disturb the friendly relations which have always existed between Russia and the United States. Aside from the belief that the treatment accorded by Russia to many of our most reputable citizens is needlessly repressive, public opinion, as your excellency knows, plays a large part in the foreign relations as well as domestic affairs with us, and when underneath this public opinion there lies an important principle, as is the case in the United States, it can not be left out of account by those who have maintained the close relations which it is desired by my Government to see maintained with this great Empire and her august ruler.

Strong words those, strong and manly words, and worthy of the American nation. But what has been the result of them? "Montes gravidunt mus ridiculus exit." All our years of diplomatic labor, the half-veiled threats of Ambassador McCormick in transmitting the resolution of this House have all come to—what? They have come to this circular of May 28, 1907, and letter issued by the Department of State. Not only have we abandoned our position, but there is no need now for Russian officials to enforce at the frontier the stern edict of their Emperor; our own Secretary of State is willing to do it here for them in the Department of State, forbidding to our own citizens their passports and withholding the protection of our own Government. And why? Because, forsooth, they are Jews! What name, I ask you, is signed at the bottom of that circular? Is it the name of Nicholas II, Czar of all the Russias? No; it is the name of Elihu Root, the American Secretary of State.

Formerly the Russian consul-general in New York performed this odious duty for his imperial master—lately this Department of State did it for him. Here is what a former Secretary of State—Gresham—wrote on the subject:

It is not constitutionally within the power of this Government or any of its authorities, to apply a religious test in qualification of the equal rights of all citizens of the United States.

And that it was—

impossible to acquiesce in the application of such a test, within the jurisdiction of the United States by the agents of a foreign power.

And that it was—

repugnant to the national sense.

He could not foresee that our own Department of State was so soon to perform that function for the Russian agents. Nor did Mr. Bayard, when in 1885 he wrote to Mr. Emmet as follows:

There is no law of the United States requiring a passport to state when a naturalized citizen left the country of his birth. * * * A different course might imply that the right of the foreign government to participate in or make the naturalization of its subjects conditional was acknowledged here. This it has never been and probably never will be. * * *

How could he have foreseen that twenty-three years later his prophecy would be confounded?

Mr. Speaker, I challenge the legal right of the Department of State to have issued this circular of May 28, 1907, and the accompanying letter. No precedent can be found for such an action. No law can be cited in support of it. The passport is primarily a certificate of citizenship; it is granted as a matter of right to every American citizen who chooses to apply for it. I have here a list of the cases in which passports have been denied by the Department of State to individuals upon the ground that those individuals were personally unworthy. Never a precedent where a class of citizens was excluded on account of their religious faith. I will read to the House these half dozen precedents.

Passports have been refused when the person applying for them "was hostile to the Union," or where the person was "engaged in violation of the laws of the United States," or where the person was "one of the criminal classes," or where the person was a "contumacious fugitive from justice," or where the person was an "anarchist," or a "Mormon missionary," or a person who "while abroad has a purpose to reside indefinitely in a foreign country or fails to show a reasonable intention to return to the United States."

Now, search that list of reasons for refusing a passport to American citizens, and find, if you can, the classes in which the Secretary of State would place the worthy and respectable Hebrews of America. Is it as "hostile to the Union" that he refuses them their passports? I ask you to search the lists of our military service, and that question will answer itself. Is it as "anarchists" that they are refused the passport, when they are known the world over as the most industrious and conservative of citizens?

Mr. Speaker, I deny categorically and absolutely the right of the Department of State to have issued this circular of May 28, 1907, and I deny further their pretension to make inquisition into the religious belief of an American citizen. If they can not secure for American citizens rights secured to us under our treaty, if they must make one of the sovereign rights of the American citizen conditional upon the assent of a foreign emperor, let them say so, and let them face the people upon that issue. I want to picture to you gentlemen what this means. Not only is it a matter of offense and insult to the Hebrews of the United States who are native born and who may have figured in some of the most memorable and honorable chapters of our history, but it is also applicable to a whole class of American citizens who were formerly subjects of Russia. One-eighth of the immigration to the United States nowadays is composed of Russian Jews. Not a family in Lithuania but has some near relative in the New World. Tens of thousands of them have fled from the land of oppression. A new exodus has taken place from under a taskmaster more stern and more severe than the Pharaoh Rameses. Tens of thousands of these people now far from the bayonets and shouts of the Cossacks, far from the scenes of riot, of murder and sudden death, are safely housed in our hospitable land, helping to upbuild the prosperity of us all. Shall we debar them forever from all chance of returning to the scenes of their childhood? Can we deny them the right to carry back to those whom they have left behind some message of hope for the future? Are we to deny them the right to take legal succession to property in Russia? This is inconsistent with our assertion of sovereignty. It is repugnant to our principles of national policy.

In the middle ages, throughout so-called "Christendom," the Jew was obliged to wear a ring of bright color upon his breast and upon his back, so that the children playing in the street might pause to point him out and to make mock of him. Today, in the twentieth century, in a land grown great because of our fundamental equality of religious faith, our own Department of State has affixed the Jewish badge. Down through the corridors of time comes ringing the old cry of "Hep, hep!" Shall we tolerate its echoes in our own Department of State? Shall we have the world to know that officially we have two classes of citizens, the one the Gentile and the other the Jew? That the former is the full citizen and the latter only a citizen by grace of the Secretary of State and the Emperor of Russia? Or shall we restore to the title of American citizen the glory which is its birthright?

Now, I want for a moment to take up the letter of the Secretary of State of last Saturday, which is introduced here for the purpose of blocking this inquiry. I wish to say to you gentlemen on the Republican side that this is not a partisan matter.

It has never been so treated before. You had a plank in your last national platform upon the subject, and so had we. In my service in the House I have never seen any evidence of an effort to bring the question of partisanship into the matter, and I beg you that, as it has not been so in the past, it shall not be now. I ask you to join us in saying that the Secretary of State shall not strangle by his premature and unsatisfactory answer to the resolution of inquiry asking for information that we are entitled to have. This gentleman [Mr. Root] is the most noted and skillful and successful apologist of modern times, but this is a very weak apology he has written here. He has furnished us with a circular, which, he says, has been substituted for the offensive circular. That substitution took place on the 25th of January, after the other circular had been published eight months, and after my colleague [Mr. GOLDFOGLE] had gone to the bureau of citizenship and called their attention to the words of the circular, which contained much offense, and had vigorously protested in the name of the Hebrews of America. This is no answer to the resolution of inquiry, nor does it give any reason why there should be so much mystery or sanctity thrown around a discussion of our relations with Russia. It is quite evident that nothing has been done by the Department of State since 1904.

Now, gentlemen, in the days of the old Roman Empire, the proud boast of "Civis Romanus sum" was respected throughout the civilized world, from the borders of Parthia to the Ultima Thule of Britain. I ask you to restore to Americans the glory that is theirs, so that it shall be recognized throughout the modern world that the proudest boast of our day is the statement, "I am an American citizen." [Loud applause.]

I reserve the balance of my time.

Mr. CAPRON. Does the gentleman desire to use his time at this time?

Mr. HARRISON. I reserve the remainder of my time.

Mr. CAPRON. Then I yield such time as I have remaining to the gentleman from Illinois.

[Mr. LOWDEN addressed the House. See Appendix.]

Mr. HARRISON. Mr. Speaker, how much time have I left?

The SPEAKER pro tempore. The gentleman has three minutes.

Mr. HARRISON. Mr. Speaker, I was very much edified by the interesting disquisition that the gentleman has made upon the war of 1812, but it does not seem to me that he has covered half the question now at issue in his reply. He did not touch on the circular of May 28, 1907, which is the one really under discussion.

Mr. LOWDEN. May I interrupt the gentleman?

Mr. HARRISON. I have only three minutes. The gentleman can reply in his own time.

The SPEAKER pro tempore. The gentleman declines to yield.

Mr. HARRISON. I want to ask the gentleman how he can justify the Secretary of State in refusing, not only to naturalized American citizens who were formerly Russian subjects, but to all American Hebrews, the right to have a passport unless a foreign power shall give consent before the passport is issued? He has furnished a very interesting historical discourse, which has given me much useful information, but he has not answered the question at issue at all.

Now, gentlemen, I appeal to you to get an answer out of the Department of State which shall be a real answer. Why did they publish the circular of May 28, 1907? What justification had they for doing so, and why did they subsequently and secretly retract it without informing the man who had protested at the bureau of citizenship and thus had brought about this inquiry—my colleague from New York [Mr. GOLDFOGLE]? Why did they do it, except to forestall the resolution of inquiry? If it was right for them for eight long months to publish a circular saying that "this Department will not issue passports to former Russian subjects or to Jews who intend going to Russian territory unless it has assurance that the Russian Government will consent to their admission," why did they retract it secretly and hurriedly last week? We are entitled to know what this means. You, gentlemen, are not here merely as individuals; you are here as Represenatives of the great American people. You represent millions of Americans who are entitled to know what is going on in this matter. I tell you there was a time not very long ago when the Congress practically managed the foreign affairs of this country, but to-day, at the suggestion of the Secretary of State that it would now be indiscreet to inquire into his doings, you propose meekly to bow your heads and receive the rod. That is not American. I appeal to you, gentlemen, to put this resolution of inquiry through and get all the information that the Department of State has on the subject. [Applause.]

Mr. CAPRON. Mr. Speaker, how much time have I remaining?

The SPEAKER pro tempore (Mr. CURRIER). The gentleman from Rhode Island has eleven minutes remaining.

Mr. CAPRON. I yield such time to the gentleman from Illinois as he desires.

[Mr. LOWDEN addressed the House. See Appendix.]

Mr. LOWDEN. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER pro tempore. The gentleman from Illinois asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. HARRISON. Mr. Speaker, I ask for the same privilege.

The SPEAKER pro tempore. The gentleman from New York asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. CAPRON. Mr. Speaker, I think it is a sufficient reply to the inquiry of the gentleman from New York, my colleague on the committee, to say that the purpose of the circular from the State Department to which he referred was simply for the protection of American citizens of Russian-Jewish descent who might, if free passports were given them, get themselves into conflict and trouble with the Russian law, one sentence of which I ask permission to read from the Secretary of State's report:

> Under the present Russian law a subject who becomes a citizen of another country without the consent of the Russian Government is deemed to have committed an offense for which he is liable to arrest and punishment if he returns without previously obtaining the permission of the Russian Government.

Mr. SULZER. Will the gentleman yield for a question?

Mr. CAPRON. Considering the short time I have, it does not seem best for me to get into a discussion of international law with the gentleman from New York, who is so thoroughly versed upon that subject, and therefore I ask him to excuse me from yielding.

The SPEAKER pro tempore. The gentleman from Rhode Island declines to yield.

Mr. CAPRON. I would say that a statute of that kind standing, as has been stated, on the basis of a lack of an international treaty regarding this subject, would seem to determine the action of the House to be all sufficient; but, with the State Department in the midst of negotiations which have not been completed, and such negotiations involving the correspondence in regard to the general subject, it not yet being a settled question, I ask any intelligent gentleman in this House if he would think it wise at this time for the State Department to promulgate this tentative arrangement which has progressed so far that within a few days a circular has been issued from the Department that passports will be granted generally to anyone who applies, and will not be refused, as they have been for the past four years, because of their desire to protect naturalized citizens from any oppression that might come to them in that country where conditions are so unsettled as they are in Russia.

Mr. GOLDFOGLE. Mr. Speaker——

Mr. CAPRON. Well, Mr. Speaker, if the gentleman has something which is really unpleasant, I would like to hear it. [Laughter.]

Mr. GOLDFOGLE. I did not catch the remark of the gentleman from Rhode Island.

Mr. CAPRON. It is not necessary to repeat it. I have yielded, and I will be glad to answer any question that I can.

Mr. GOLDFOGLE. The gentleman from Rhode Island, who is so thoroughly conversant with the procedure of this House and the form of resolutions, especially when they relate to foreign affairs, will perhaps answer this inquiry. The gentleman from Illinois [Mr. LOWDEN] seemed to take exception to that portion of the resolution that called upon the Secretary of State to inform this House, if not incompatible with the public interest, as to certain things. Does not the gentleman from Rhode Island recognize the fact that that is the regular, customary, uniform way of wording a resolution?

Mr. CAPRON. The resolution or the reply?

Mr. GOLDFOGLE. The resolution.

Mr. CAPRON. Why certainly, and I should say that under the circumstances and from my experience covering some years,

as the gentleman has said, that it ought to be the stereotyped reply to very many resolutions of this kind. I believe there is nothing more that I desire to say and I therefore move that the resolution do lie upon the table.

Mr. HARRISON. Mr. Speaker——

The SPEAKER pro tempore. For what purpose does the gentleman rise?

Mr. HARRISON. May I ask the privilege of unanimous consent for such gentlemen on this side of the Chamber as desire to print their remarks in the RECORD, to be accorded that privilege for the next five days.

Mr. CAPRON. I shall object.

The SPEAKER pro tempore. The gentleman from New York asks unanimous consent that members have five days in which to print remarks, and to that request the gentleman from Rhode Island objects. The question is on the motion of the gentleman from Rhode Island, that the resolution do lie upon the table.

Mr. GOLDFOGLE. Mr. Speaker——

The SPEAKER pro tempore. For what purpose does the gentleman rise?

Mr. GOLDFOGLE. Will the Speaker withhold the stating of that motion for a second?

The SPEAKER pro tempore. The question is not debatable.

Mr. YOUNG. Mr. Speaker, I call for the regular order.

The SPEAKER pro tempore. The regular order is demanded. The question is on the motion of the gentleman from Rhode Island that the resolution do lie upon the table.

The question was taken, and a division was demanded by Mr. SULZER.

The House divided, and the Speaker announced that 56 had voted in the affirmative.

Mr. WILLIAMS. Mr. Speaker, to save the time of the House, I believe that we had better have the yeas and nays.

The yeas and nays were ordered.

The question was taken, and there were—yeas 120, nays 101, answer "present" 7, not voting 161, as follows:

YEAS—120.

Acheson	Dawson	Hull, Iowa	Norris
Alexander, N. Y.	Douglas	Humphrey, Wash.	Olcott
Allen	Draper	Jenkins	Olmsted
Bannon	Dwight	Jones, Wash.	Overstreet
Barchfeld	Edwards, Ky.	Kinkaid	Parsons
Barclay	Englebright	Knapp	Payne
Bates	Esch	Knowland	Perkins
Beale, Pa.	Foster, Vt.	Küstermann	Porter
Birdsall	Foulkrod	Lafean	Pray
Bonynge	Fuller	Langley	Prince
Brownlow	Gaines, W. Va.	Law	Reeder
Burke	Gardner, N. J.	Lawrence	Reynolds
Burton, Del.	Gilhams	Lindbergh	Roberts
Butler	Greene	Littlefield	Smith, Iowa
Calder	Gronna	Longworth	Snapp
Campbell	Hale	Lovering	Stafford
Capron	Hall	Lowden	Steenerson
Cary	Harding	McCall	Stevens, Minn.
Caulfield	Haskins	McCreary	Sulloway
Chapman	Haugen	McGuire	Taylor, Ohio
Cocks, N. Y.	Hayes	McKinney	Thomas, Ohio
Conner	Henry, Conn.	Madison	Tirrell
Cooper, Wis.	Hepburn	Malby	Volstead
Cousins	Hinshaw	Mann	Waldo
Crumpacker	Howell, N. J.	Miller	Wanger
Currier	Howland	Moon, Pa.	Washburn
Cushman	Hubbard, Iowa	Moore, Pa.	Weeks
Dalzell	Hubbard, W. Va.	Morse	Weems
Darragh	Huff	Mouser	Wheeler
Davis, Minn.	Hughes, W. Va.	Needham	Young

NAYS—101.

Adair	Dixon	Houston	Rucker
Adamson	Ellerbe	Howard	Russell, Mo.
Alexander, Mo.	Ferris	Hughes, N. J.	Russell, Tex.
Ansberry	Finley	Hull, Tenn.	Sabath
Ashbrook	Flood	Humphreys, Miss.	Shackleford
Bartlett, Ga.	Floyd	James, Ollie M.	Sheppard
Beall, Tex.	Foster, Ill.	Johnson, Ky.	Sherwood
Bell, Ga.	Fulton	Kelliher	Sims
Booher	Garner	Kimball	Slayden
Bowers	Garrett	Kipp	Smith, Mo.
Brantley	Gill	Lamar, Mo.	Smith, Tex.
Brodhead	Goldfogle	Leake	Stanley
Burgess	Gregg	Lloyd	Stephens, Tex.
Burnett	Hackett	Maynard	Sulzer
Byrd	Hackney	Moon, Tenn.	Talbott
Candler	Hamill	Moore, Tex.	Tou Velle
Carter	Hamilton, Iowa	Nicholls	Underwood
Clark, Fla.	Hammond	O'Connell	Wallace
Clark, Mo.	Hardwick	Padgett	Watkins
Cockran	Hardy	Page	Webb
Cooper, Tex.	Harrison	Peters	Williams
Cox, Ind.	Hay	Pujo	Wilson, Pa.
Cravens	Heflin	Randell, Tex.	Wolf
Crawford	Helm	Rauch	
Davenport	Henry, Tex.	Rhinock	
Denver	Hitchcock	Rothermel	

ANSWERED "PRESENT"—7.

Boutell	Gaines, Tenn.	Ransdell, La.	Small
Denby	Goulden	Sherman	

NOT VOTING—161.

Aiken	Ellis, Oreg.	Kennedy, Ohio	Parker, S. Dak.
Ames	Fairchild	Kitchin, Claude	Patterson
Andrus	Fassett	Kitchin, Wm. W.	Pearre
Anthony	Favrot	Knopf	Pollard
Bartholdt	Fitzgerald	Lamar, Fla.	Pou
Bartlett, Nev.	Focht	Lamb	Powers
Bede	Fordney	Landis	Pratt
Bennet, N. Y.	Fornes	Laning	Rainey
Bennett, Ky.	Foss	Lassiter	Reid
Bingham	Foster, Ind.	Lee	Richardson
Boyd	Fowler	Legare	Riordan
Bradley	French	Lenahan	Robinson
Brick	Gardner, Mass.	Lever	Rodenberg
Broussard	Gardner, Mich.	Lewis	Ryan
Brumm	Gillespie	Lilley	Saunders
Brundidge	Gillett	Lindsay	Scott
Burleigh	Glass	Livingston	Sherley
Burleson	Godwin	Lorimer	Slemp
Burton, Ohio	Goebel	Loud	Smith, Cal.
Calderhead	Gordon	Loudenslager	Smith, Mich.
Caldwell	Graff	McDermott	Southwick
Carlin	Graham	McGavin	Sparkman
Cassel	Granger	McHenry	Sperry
Chaney	Griggs	McKinlay, Cal.	Spight
Clayton	Haggott	McKinley, Ill.	Sterling
Cole	Hamilton, Mich.	McLachlan, Cal.	Sturgiss
Cook, Colo.	Hamlin	McLain	Tawney
Cook, Pa.	Hawley	McLaughlin, Mich.	Taylor, Ala.
Cooper, Pa.	Higgins	McMillan	Thomas, N. C.
Coudrey	Hill, Conn.	McMorran	Townsend
Craig	Hill, Miss.	Macon	Vreeland
Davey, La.	Hobson	Madden	Watson
Davidson	Holliday	Marshall	Weisse
Dawes	Howell, Utah	Meyer	Wiley
De Armond	Jackson	Mondell	Willett
Diekema	James, Addison D.	Mudd	Wilson, Ill.
Driscoll	Johnson, S. C.	Murdock	Wood
Dunwell	Jones, Va.	Murphy	Woodyard
Durey	Kahn	Nelson	
Edwards, Ga.	Keifer	Nye	
Ellis, Mo.	Kennedy, Iowa	Parker, N. J.	

So the motion was agreed to.

The Clerk announced the following pairs:

Upon this vote:

Mr. TOWNSEND with Mr. SPIGHT.

Mr. TAWNEY with Mr. TAYLOR of Alabama.

Mr. STURGISS with Mr. SMALL.

Mr. STERLING with Mr. ROBINSON.

Mr. SOUTHWICK with Mr. RYAN.

Mr. SLEMP with Mr. SAUNDERS.

Mr. SCOTT with Mr. RICHARDSON.

Mr. RODENBERG with Mr. REID.

Mr. POLLARD with Mr. PRATT.

Mr. PEARRE with Mr. POU.

Mr. MUDD with Mr. PATTERSON.

Mr. MARSHALL with Mr. NICHOLLS.

Mr. MADDEN with Mr. RAINEY.

Mr. MCMORRAN with Mr. MCHENRY.

Mr. MCLAUGHLIN of Michigan with Mr. MCDERMOTT.

Mr. MCKINLEY of Illinois with Mr. MACON.

Mr. LANDIS with Mr. MCLAIN.

Mr. LAFEAN with Mr. LINDSAY.

Mr. KENNEDY of Ohio with Mr. LEWIS.

Mr. KENNEDY of Iowa with Mr. LEVER.

Mr. KAHN with Mr. LEGARE.

Mr. HOWELL of Utah with Mr. LEE.

Mr. HOLLIDAY with Mr. LASSITER.

Mr. HILL of Connecticut with Mr. LAMB.

Mr. HAWLEY with Mr. LAMAR of Florida.

Mr. HAMILTON of Michigan with Mr. CLAUDE KITCHIN.

Mr. GOEBEL with Mr. GORDON.

Mr. GILLETT with Mr. HILL of Mississippi.

Mr. GARDNER of Michigan with Mr. GRANGER.

Mr. FOSTER of Indiana with Mr. GODWIN.

Mr. FOSS with Mr. WILLIAM W. KITCHIN.

Mr. FORDNEY with Mr. HOBSON.

Mr. ELLIS of Oregon with Mr. GLASS.

Mr. DUNWELL with Mr. GILLESPIE.

Mr. DIEKEMA with Mr. FAVROT.

Mr. DAWES with Mr. EDWARDS of Georgia.

Mr. COUDREY with Mr. DAVEY of Louisiana.

Mr. COLE with Mr. CRAIG.

Mr. CALDERHEAD with Mr. CARLIN.

Mr. BURTON of Ohio with Mr. DE ARMOND.

Mr. BURLEIGH with Mr. CLAYTON.

Mr. AMES with Mr. AIKEN.

Mr. BARTHOLDT with Mr. BROUSSARD.

Mr. BEDE with Mr. BARTLETT of Nevada.

Mr. BENNETT of Kentucky with Mr. CALDWELL.

Mr. BINGHAM with Mr. BURLESON.

Mr. BRICK with Mr. FITZGERALD.

Mr. WATSON with Mr. WILEY.

Mr. WOODYARD with Mr. WILLETT.

Mr. VREELAND with Mr. JOHNSON of South Carolina.
For the day:
Mr. FAIRCHILD with Mr. JONES of Virginia.
Mr. FASSETT with Mr. LENAHAN.
Mr. SMITH of Michigan with Mr. HAMLIN.
Mr. ANDRUS with Mr. MURPHY.
Mr. COOPER of Pennsylvania with Mr. THOMAS of North Carolina.
Mr. LOUDENSLAGER with Mr. LIVINGSTON.
For the remainder of this session:
Mr. WEISSE with Mr. KNOPF.
Mr. BENNET of New York with Mr. FORNES.
Mr. SHERMAN with Mr. RIORDAN.
Mr. ELLIS of Missouri with Mr. RANSDELL of Louisiana.
Until further notice:
Mr. MALBY with Mr. MEYER.
Mr. DAVIDSON with Mr. SPARKMAN.
Mr. BRADLEY with Mr. GOULDEN.
Mr. DENBY with Mr. SHERLEY.
Mr. BOUTELL with Mr. GRIGGS.
Mr. POWERS with Mr. GAINES of Tennessee.
Mr. SHERMAN rose.

The SPEAKER pro tempore. For what purpose does the gentleman rise?

Mr. SHERMAN. For the purpose of correcting or changing a vote. My attention was distracted for the moment when my name was called, and I inadvertently voted "no." I intended to vote "aye." I see I am announced as being paired with the gentleman from New York [Mr. RIORDAN], so I desire to withdraw my vote and simply state that if Mr. RIORDAN was present I should vote "aye," and he would vote "no." I desire now to vote "present."

The SPEAKER pro tempore. Call the gentleman's name.

The Clerk called Mr. SHERMAN's name, and he answered "present."

Mr. GAINES of Tennessee. Mr. Speaker, I voted "no," and I am paired. I desire to withdraw my vote and answer "present."

The SPEAKER pro tempore. Call the gentleman's name.

The Clerk called the name of Mr. GAINES of Tennessee, and he answered "present."

Mr. PATTERSON. Mr. Speaker, I would like to have my vote recorded.

The SPEAKER pro tempore. The gentleman is not recorded.

Mr. PATTERSON. I would like to have my vote recorded.

The SPEAKER pro tempore. Was the gentleman present and in his seat and listening when his name was called or should have been called?

Mr. PATTERSON. I was just walking on the floor of the House when my name was passed.

The SPEAKER pro tempore. The Chair does not hear the gentleman.

Mr. PATTERSON. I was not in my seat; I was just walking in on the floor of the House when my name was called.

The SPEAKER pro tempore. Was the gentleman on the floor of the House and listening when his name should have been called?

Mr. PATTERSON. I was not.

The SPEAKER pro tempore. The gentleman can not be recorded as voting.

Mr. RANSDELL of Louisiana. Mr. Speaker, I inadvertently voted "no." I forgot for the moment that I was paired with Mr. ELLIS of Missouri.

The SPEAKER pro tempore. Call the gentleman's name.

The Clerk called the name of Mr. RANSDELL of Louisiana, and he answered "present."

The result of the vote was announced as above recorded.

On motion of Mr. CAPRON, a motion to reconsider the last vote was laid on the table.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES.

A message, in writing, from the President of the United States was communicated to the House of Representatives by Mr. LATTA, one of his secretaries.

REPORT OF COMMITTEE ON GRADES AND SALARIES.

The SPEAKER laid before the House the following message from the President of the United States, which was read and, with the accompanying documents, was referred to the Committee on Appropriations and ordered to be printed:

To the Senate and House of Representatives:

I transmit herewith for the consideration of the Congress estimates for salaries in the Executive Departments and establishments prepared by the committee on grades and salaries under the Executive order of June 11, 1907.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *February 11, 1908.*

INDIAN APPROPRIATION BILL.

On motion of Mr. SHERMAN, the House resolved itself into Committe of the Whole House on the state of the Union for the further consideration of the bill H. R. 15219, the Indian appropriation bill, Mr. PERKINS in the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the further consideration of the Indian appropriation bill. Does the gentleman from New York press the point of order?

Mr. SHERMAN. Mr. Chairman, I insist upon the point of order I raised yesterday at the time the committee rose.

The CHAIRMAN. The gentleman from New York insists upon his point or order. Does the gentleman from Oklahoma wish to be heard upon the point of order?

Mr. FERRIS. I do not desire to resist the point of order, but I have an amendment which I think is in keeping with the wishes of the committee, and offer this as a substitute therefor.

The CHAIRMAN. The point of order is sustained. The Clerk will report the amendment offered by the gentleman from Oklahoma.

The Clerk read as follows:

Insert, after line 14, "That the Secretary of the Interior be, and he is hereby, authorized to pay, or cause to be paid, out of any money in the Treasury to the credit of the Kiowa, Comanche, and Apache Indians of Oklahoma an amount of money, the total of which shall not exceed $100 per capita, to the Kiowa, Comanche, and Apache tribes of Indians in Oklahoma. This shall not apply as a limitation on any former powers vested in the Secretary with reference to the funds to the credit of said Indian tribes."

Mr. MANN. Mr. Chairman, I reserve the point of order on the amendment.

The CHAIRMAN. The gentleman from Illinois reserves the point of order.

Mr. FERRIS. Mr. Chairman, I desire, gentlemen of the committee, to state again succinctly why I offered the amendment yesterday and why I withdrew it to-day and offer in lieu thereof the amendment which I have just sent to the desk. The parties for whom this relief is asked consists of the Kiowa, Comanche, and Apache Indians of southwestern Oklahoma. The lands belonging to these Indians have already, save their own allotment of 160 acres each, been recently sold and the money placed in the Treasury subject to disposition as Congress may direct.

For the past series of years the Indians of those three tribes have been paid from past annuities and other sources out of their own money, $50 each every six months. The last two payments, as I am informed by the Commissioner and likewise by the Indian chiefs, who are here in person and have presented the matter to me at length, were cut short by reason of the money not being available—their own money. Yesterday I thought, inasmuch as Congress was not at all times in session and as these payments fell due at times when Congress could not give them the relief and dictate how those funds should be paid to them as a necessity demanded them, I asked that the Secretary of the Interior be empowered to pay this money to them in installments as they needed it. It has been suggested by the chairman of the Committee on Indian Affairs and other gentleman who are familiar with the situation that that is further than Congress would now like to go. I therefore offer the amendment that I just sent to the desk, which only permits the Secretary of the Interior to pay them now about the amount that they have failed to receive in the past to make up the usual payment they should have received at each of the former six months' payments. And I want to say as another reason why this is urgently urged that at this time the only money available for the Kiowa, Comanche, and Apache Indians, even though they have a large fund in the Treasury that belongs to them as proceeds of the sale of their lands, is $13 each.

Now, the last two payments being cut short and this payment cut down to $13 works a great hardship on those three Indian tribes. I do not believe it is the disposition of this committee to ask for any technical ruling on the part of the Chair to cut them out of that relief. I said on yesterday that perhaps this is a kind of eleventh-hour concession, and perhaps this is coming at a time when I should not take the time of the committee to bring it up, but, on the contrary, should go to the committee with it in the regular way. But these people are uneducated. They can not speak English. They do not know their rights, and they do not present them in a formal way. But I take it that there should be no proper objection to this House acting now, because of the spirit and the purpose of this act, and every other appropriation act for Indians, is certainly to benefit the situation, and surely a technical reservation of a point of order should not be made against it, even though it was not properly presented. If this amendment will now be offered and be ac-

cepted and received, the Secretary of the Interior may pay over to them $100 each, which will just about make up for the amount that their payments fell short in the past, and let them have their money that is now due and which they have reason to expect they would get.

I want to say one word more, and I do not want to consume too much time, to show why it is eminently necessary that this be done. They had reason to believe by precedent and former payments that they were going to get $50 apiece at the last semiyearly payment. They did not get it. That left the Indians in debt. The recent money stringency came on, and it left them in debt in the fall of the year, and all through the winter they have been in debt; their stock has been without a sufficient amount of feed, and their children and their people are really suffering in Oklahoma to-day, with money in the Treasury.

The CHAIRMAN. The time of the gentleman from Oklahoma has expired.

Mr. FERRIS. Mr. Chairman, I ask unanimous consent to have five minutes more.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. FERRIS. Another important reason why this should be done is that their lands have all be sold excepting their individual allotment of 160 acres each. Anyone who is familiar with the way the Comanche, Kiowa, and Apache Indians have lived knows that it has not been their custom to live on their own individual allotments, but now that the other lands have been sold and taken up, it becomes necessary for them to settle and take up residence on their own individual allotments.

That being true, they need money with which to build fences, they need money with which to build houses, and they need money to buy feed. The spring of the year is coming on, and I hope the gentleman will not insist on his point of order against this very necessary amendment. The chiefs are here, who will corroborate everything I have said. I took them to the committee room this morning to fully bear out every word I had said, but through unfortunate circumstances, I did not get a chance to present the matter in full to the chairman of the committee, by reason of his being detained. In addition to that, as was suggested yesterday, this matter is earnestly recommended in a letter from the Department of the Interior, that was sent to the Committee on Indian Affairs on December 11 last. So it is not an entirely new matter. It is something that the Indian Commissioner wants, the Department of the Interior wants, and I believe it is a matter that justice demands on the part of the Indians.

Mr. MANN. Will the gentleman tell us how much there is of this fund in the Treasury that belongs to these Indians?

Mr. FERRIS. It consists of two funds. One fund is $1,500,600; the other fund is some eight hundred and sixty-odd thousand dollars; I am not sure about the last, but I am about the first; neither of which is available for the Indians.

Mr. MANN. That is the principal, and the payment is the interest on these funds?

Mr. FERRIS. The interest on the fund has been paid out to these Indians, and to such an extent that the Commissioner informed me just before convening to-day that every cent that was due would only give the Indians about $13 a piece on this payment.

Mr. MANN. How many of these Indians are there?

Mr. FERRIS. About 3,700 in the three tribes.

Mr. MANN. Three thousand seven hundred; and the interest is apportioned among them. How much does it amount to a year?

Mr. FERRIS. I can not answer the gentleman with mathematical accuracy, but the Commissioner informed me that it would only amount to $13 a piece.

Mr. MANN. But it goes to a very much wider question. These Indians, as I understand it, and the gentleman can inform me if it is not so, draw 4 per cent interest for this fund in the Treasury?

Mr. FERRIS. That is correct.

Mr. MANN. This proposition is to invade the principal? Now, these Indians have been paid, you say, out of the interest $50 semiannually?

Mr. FERRIS. That is not the interest on this fund alone, but from the sale of some lands, etc.

Mr. SHERMAN. The total interest to-day of this investment fund, money in the Treasury, is $75,031, and their income from other sources other than gratuities is $32,132; in other words, $107,000.

Mr. MANN. That is about $300 apiece.

Mr. SHERMAN. Oh, no; about $30 apiece.

Mr. FERRIS. Three thousand seven hundred of them.

Mr. MANN. And then they get the interest on this fund?

Mr. FERRIS. And that only semiyearly; yes.

Mr. MANN. Now, then, we have allotted to these Indians their lands in severalty, 160 acres; now, do you propose, after the allotment is made, that we shall support them out of their property? Is that to be the policy the gentleman advocates for his part of the country—that we shall allot the Indians their lands in severalty to the extent of a homestead of 160 acres, and then agree to pay them interest as their little current money, chicken feed, as it were, and as soon as that is done propose to invade the principal? What will they have to live on after the property is gone?

Mr. STEPHENS of Texas. If the gentleman will allow me, these Indians have wild lands, and unless they can have money they can not break up these lands, and unless they break them up they can not be cultivated, and they will not be able to make their improvements and not be able to improve their situation.

[Here the hammer fell.]

Mr. FULTON. I ask that the gentleman may have five minutes more.

Mr. McGUIRE. Mr. Chairman, in answer to the gentleman from Illinois, I want to say that what the Indian wants is an understanding as to what shall be done with him. The policy as to these Indian tribes has been to pay them $50 per capita semiannually. The last two payments have not amounted to $50. I do not know just exactly what the payments were. But the understanding with the Department was that these payments would regularly be $50. That is all that they ask; all they are asking now. The disposition of the Indian is such that he wants to know what he may expect. He has been given to understand that he might expect these $50 payments twice a year.

Mr. MANN. Well, but was he given to understand that this amendment proposes to give $100?

Mr. McGUIRE. That is what I am coming to. In conference with the Commissioner of Indian Affairs yesterday, his statement was that they should like to pay these Indians now enough to make $50 semiannually. That would satisfy the Indians.

Mr. MANN. Well, now, is it not a fact that they were paid $30 at the last semiannual payment?

Mr. McGUIRE. I do not know as to that; I think that was the amount.

Mr. MANN. And they were only short $20?

Mr. McGUIRE. At that one payment.

Mr. MANN. And that there is now money sufficient to pay them $13?

Mr. McGUIRE. About $13.

Mr. MANN. So that that would be $37 as the total, and here is a proposition to pay them $100.

Mr. McGUIRE. My impression is that there is another payment of $50 that they did not get in full.

Mr. MANN. The gentleman may have that impression; my impression is that that is not the case.

Mr. McGUIRE. The gentleman may be right; I can not say as to that; but, Mr. Chairman, there has never been a time and will never come a time when these Indians are more in need of this money than now. They have received and taken their allotments; they are attaining civilization rapidly. They have never been able to reach a point where they could cultivate their lands; they are needing the money to make the improvements, and there never can come a time when they will be as much in need of this money as at this time.

There has been some depression there. They have exhausted their means; they have exhausted their credit; they are badly in need of this payment, and I hope the gentleman will not make the point of order.

Mr. MANN. Can the gentleman tell us how the depression affects the community?

Mr. McGUIRE. I suppose the same way as it affects every other community.

Mr. MANN. I fail to understand how it is affecting any community in that respect.

Mr. HULL of Iowa. How it affects this question.

Mr. McGUIRE. It affects the Indian as it affects everybody else.

Mr. MANN. Well, how? The money that they are entitled to is in the Treasury.

Mr. McGUIRE. These Indians have had local credit. They have been able to go to the banks and get money.

Mr. MANN. I guess that is the trouble. They have had credit, and now they are in debt, and they want the Government to advance them a part of their principal to pay their debts with, if I am correctly informed.

Mr. FERRIS. Oh, no.

Mr. MANN. And it is not the Indians as much as it is the other people who are anxious about this.

Mr. McGUIRE. These Indians have not incurred an indebtedness beyond what they had a right to expect they would be able to meet. They have been securing these $50 payments, and they have had the right to expect that these payments would continue, because they had been given to understand that. Now that the payments are reduced, it is no fault of the Indian. He has incurred an indebtedness that he can not pay, and that indebtedness has destroyed his credit, and that is the condition of the Indian at this time; and I say if we ever expect to give them the money which is theirs, we should give it to them now. This money is in the Treasury of the United States; it belongs to the Indians, and they have asked for it through their representatives, and it seems to me, if we ever expect to give it to them, there is no better time than now.

Mr. MANN. Did we not enter into a treaty—not a regular treaty, but an arrangement—with them, providing how this money should be invested; that it should be put into the Treasury and that we should pay them interest on it?

Mr. McGUIRE. There is no doubt that this money is in the Treasury, but not by any treaty.

Mr. MANN. Not a regular treaty, but an arrangement.

Mr. SHERMAN. Oh, yes; the gentleman from Illinois is right. We entered into an agreement with them.. Call it a treaty, or whatever it is. Mr. Chairman, if I may have the floor for a minute, the proposition here is a broad one, it seems to me as the gentleman from Oklahoma [Mr. McGUIRE] has stated. We did enter into an agreement with these Indians, by which they parted with the title to their lands, and we did undertake to dispose of the lands for the Indians. Some of them have been disposed of and some of them not. The various members of the tribes have taken allotments. We have disposed of part of their lands, which have not yet all been paid for. The agreement provided that a portion of the money derived should be distributed in per capita payments to the Indians, which has been done. It provided further that a million and a half dollars should be deposited in the Treasury to the credit of these Indians and that they should receive 5 per cent interest. More money, however, has been derived from the sale of these lands than the most optimistic had ever dared to expect, so that there has already been paid in for the benefit of these Indians more than the million and a half dollars which we agreed to keep for them and pay them 5 per cent interest on and more than the amount that was distributed per capita. Now the condition is present, as the Commissioner of Indian Affairs told me to-day, where these Indians are in need of some of the principal of their own money to help them out in building homes, and in breaking up the soil, and in preparing to make their allotments productive. They are here themselves, by representatives of the tribe, asking that a certain portion of the money be paid to them. What they ask is $100 per capita to be distributed, amounting to between $300,000 and $400,000. It is a question with us now whether we shall recognize the fact that these particular Indians are in need of the use of some of their principal, which is an amount in excess of the amount we originally contemplated would be in the Treasury for their benefit. I hope I make myself clear.

Mr. MANN. I get the distinction, but I think very few people will ever get it, if the precedent is once established, I will say to the gentleman. We get the distinction under his magnetic influence now.

Mr. SHERMAN. No; we have done the same thing for other Indians, and I trust we will again. I am not one of those who, like my distinguished friend from Iowa, Mr. Lacey, in the last Congress, was in favor of providing for the distribution of the thirty-odd million dollars of principal of the trust funds to the Indians and get rid of this fund.

I did not favor that bill then, and I do not favor it now. I did not favor distributing the entire proceeds of this trust fund to various tribes per capita. I did think it was wise to vest authority in the Secretary to pay to the individual Indian his proportion of the trust fund deposited in the Treasury when he had demonstrated his capacity to care for his own property, but that is not here.

This is not establishing a precedent. We have heretofore paid the Indians a portion of the principal fund which was in the Treasury to their credit when the conditions arose which demonstrated that it was for the best interest of the Indians that it should be done at a particular time. Now, the administrative part of the Government, who are more familiar with the business there than I am—I do not know that they are more familiar than is my colleague from Oklahoma—but they are more familiar than am I or the gentleman from Illinois, and the gentleman from Illinois is talking for a principle, as I understand—the Department urges me to-day most strongly to favor this proposition upon the ground that it is for the present best interests of these particular tribes and, as the Commissioner believes, for their ultimate good.

Mr. MANN. May I ask the gentleman from New York a further question?

Mr. SHERMAN. Certainly.

Mr. MANN. Are these the only tribes where this proposition is to be made?

Mr. SHERMAN. There is not in the bill a provision, but somebody suggested to me that they might perhaps offer an amendment to distribute the principal fund to the Sac and Fox Indians and the Iowas, but there is nothing in the bill to that effect, and I do not know that the amendment will be offered.

Mr. MANN. Does the gentleman think this precedent will not involve us in trouble?

Mr. SHERMAN. It is not a precedent. It is not a precedent unless doing the same thing over and over and over again is re-establishing a precedent. This precedent, as the gentleman calls it, has already been established; we have heretofore been doing the same thing.

Mr. MANN. Dividing up the Indian fund?

Mr. SHERMAN. Not the whole fund.

Mr. MANN. The partial fund?

Mr. SHERMAN. We have heretofore paid the Indian tribes a portion of their trust funds when conditions have arisen that Congress believed warranted such action.

Mr. MANN. Does the gentleman believe that if the land had not sold for a high price and made the Indians hungry for money there would have been anybody here asking for that money?

Mr. SHERMAN. Perhaps not; but if not, there would be many people here asking us to increase by a large measure the gratuity which we give the Indians. We formerly granted to these Indians as a gratuity a sum much larger than we have been doing of late.

Mr. GAINES of Tennessee. Why are they in such a bad condition?

Mr. MANN. I thought these Indians were all rich.

Mr. SHERMAN. They are comparatively rich. Here is in the neighborhood of $3,000,000 to be divided among 3,800 Indians. I do not know what their measure of wealth is, but I think a per capita of $1,000 is pretty large.

Mr. MANN. Each one has a homestead?

Mr. SHERMAN. Yes.

Mr. MANN. And unallotted lands besides?

Mr. SHERMAN. No; no unallotted lands. Those have been sold, and that is where this money comes from.

Mr. MANN. Somebody said that there was a lot more of unallotted land.

Mr. SHERMAN. That is error.

Mr. GAINES of Tennessee. Will the gentleman tell me why the Indians are in this bad financial condition?

Mr. SHERMAN. They are not in any deplorable condition. They have accepted allotment, and it is hoped they will work out the allotment until they have made farms and built little homes on them. I sometimes get tired, Mr. Chairman——

Mr. GAINES of Tennessee. The gentleman never looks it. [Laughter.]

Mr. SHERMAN. I thank the gentleman. I was going to say that I sometimes get tired at the suggestions made here that the Indian is such a miserable creature. Why, I have seen thousands and thousands of white men in my own State that I would trade off in a minute for a half a dozen Indians. [Laughter.] There are some Indians that are no good, the same as a lot of white people that are no good, but the gentleman from Tennessee must understand that we have to be helping white people all the while. Every county in his own State maintains a poorhouse. How many times has the gentleman personally been called on by his constituents to put his hand down in his pocket and help a man out to buy a plow or rethatch a church? [Laughter.]

Mr. GAINES of Tennessee. The gentleman does not want me to take up the balance of the session, does he? [Laughter.]

Mr. BUTLER. Will the gentleman allow me to ask a question?

Mr. SHERMAN. As soon as I get through with the gentleman from Tennessee.

Mr. GAINES of Tennessee. Mr. Chairman, I want to say that I am on the side of the Indians. I never have thought that we treated them exactly right. It seems to me from what the gentleman from Oklahoma [Mr. FERRIS] has said that the

Indian now needs some money. I can see that, and I am talking seriously. What do we have? We have, first, the banks all shut down as against the Indian and the white man, too, and not only that, but the Indians have the Treasury doors shut against them. The gentleman from Oklahoma and his colleague [Mr. McGUIRE] have said that they now need money—to do what? To buy seed and to buy farm machinery. What I am trying to elucidate is this: Is their condition now such as that the Government should do something unusual, extraordinary, but of course not unwise?

Mr. SHERMAN. Why, this is not unusual or extraordinary other than that we are going to give them some of their own money instead of taking money out of the Treasury of the United States for their assistance.

Mr. GAINES of Tennessee. Now, if they have not enough seed or can not get any seed to go to farming, and they have money here—trust funds—we certainly ought to give them their money.

Mr. SHERMAN. Well, that is what we are trying to do.

Mr. GAINES of Tennessee. Or let the Secretary of Agriculture send them out some seed.

Mr. SHERMAN. Well, that is what we are trying to do.

Mr. GAINES of Tennessee. Well, I am for it. [Laughter.] I am glad that we have struck seed, Mr. Chairman, and I hope it will not be "wild oats."

Mr. MANN. Mr. Chairman, I would like to make a further inquiry.

The CHAIRMAN. The Chair will suggest that debate on this amendment is exhausted.

Mr. SHERMAN. I ask unanimous consent that the gentleman may proceed for five minutes.

There was no objection.

Mr. MANN. I would like to know whether this hundred dollars is all principal or part principal and part interest, and whether the intention is to pay them more than they have usually been getting?

Mr. FERRIS. I believe, in response to the gentleman's question, that I can state the facts. The situation is this: Their regular six months' payment, their semiannual payment, is now due in February. Next fall, next September, when the next payment comes due, this Congress will not be in session, and, as the gentleman will note, my amendment does not seek to give the Secretary any authority other than to make this payment for them. He will then leave any little accumulations of interest that may be to try and come as near as possible to making their usual payment next September, when there is no one to appeal to who will be able to help him out.

Mr. MANN. Is the gentleman satisfied that they will not construe this as a precedent as to the amounts that they are to receive? Heretofore they concluded they were to have $50 every time because they got it the first time. Will they not now think that they are to get $100 every time?

Mr. FERRIS. Of course I can not answer that question. I can only say that for the past six years, from their pasture annuities and their rentals and grass money, and other little items that they have accumulated on their public lands, which have since been sold, they have been able to pay them $50 semiyearly. At the last payment they were not able to do this, and that leaves them in a deplorable condition, and they ask to have enough of their own money to start them off on their allotments.

Mr. MANN. I withdraw the point of order.

The CHAIRMAN. The point of order is withdrawn. The question is on the amendment offered by the gentleman from Oklahoma.

The question was taken, and the amendment was agreed to.

Mr. SHERMAN. Mr. Chairman, I suggest that we now go back and dispose of the two little matters we passed over informally, with the agreement to go back. I ask to go back to page 18, and I offer the following amendment to follow line 9, which I send to the desk and ask to have read.

The Clerk read as follows:

Insert after line 18 on page 18:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Rebok & Cramer, a copartnership composed of Philip K. Rebok and Hiram W. Cramer, of Toledo, Iowa, the sum of $716, found due them by the Secretary of the Interior under contract dated October 2, 1905, for construction of laundry building and water system at the Sac and Fox Indian School, Iowa, under the appropriation heretofore made for said purpose."

Mr. MANN. Mr. Chairman, I reserve the point of order.

Mr. SHERMAN. If the gentleman will permit me, I will make an explanation. In 1905 a provision was made for certain additions at this agency and contracts were let for various improvements, and amongst other contracts a contract with these gentlemen named in the amendment amounting to considerably over $3,000, was made for a water supply. The bids were accepted on the 7th day of September, but the contract was not forwarded to the bidders until the 7th of October and was not approved by the Secretary until the 24th of October, although the contract provided that the work should be completed by the 1st of December. The contractors immediately communicated with the Indian Office, asking if the penalty embraced in the contract, $6 a day, would be enforced if the work was not completed in time. The Indian Office replied for them to go ahead as fast as they could and that all the conditions would be considered at the time of settlement. The contractors did not finish their work until one hundred and thirty-odd days after the 1st of December. At the time of settlement there was deducted from the amount due $816, or $6 a day, for the time they were behind. They accepted the money which was sent and then protested to the Department, calling their attention to the letters which were written, etc., and the Department at once said, Why, this was a mistake; that a hundred dollars was all they ought to have retained from this contract price to cover any possible loss that could have been occasioned the Government by reason of this failure to comply with the contract.

Mr. MANN. I am satisfied.

Mr. SHERMAN. Very good. The gentleman from Illinois states he is satisfied with the explanation. This is to pay, not the full amount, but the amount less the $100 which the Department states should have been retained. The gentleman from Illinois withdraws his point of order.

The CHAIRMAN. Does the gentleman from Illinois insist upon his point of order?

Mr. MANN. No; I do not.

The CHAIRMAN. The point of order is waived. The question is on the amendment offered by the gentleman from New York.

The question was taken, and the amendment was agreed to.

Mr. SHERMAN. Now, Mr. Chairman, if you will turn to page 21, lines 8 and 9, there was an error made in the printing of the bill which gave rise to the discussion the other day and to the misunderstanding. The item should be "to complete a drainage survey," not "drainage and survey," but inasmuch as there is no provision here for reimbursement, I have redrawn the provision and I offer an amendment, which I send to the Clerk's desk, to take the place of lines 8 and 9.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 21 strike out lines 8 and 9 and insert in lieu thereof the following:

"To complete the drainage survey provided for under the act of June 21, 1906, $10,000: *Provided*, That said amount shall be reimbursed to the Treasury of the United States from the funds in the Treasury belonging to said Indians derived from the sale of lands under the act of January 14, 1889."

Mr. MANN. Mr. Chairman, I make the point of order that is pending against the language on page 21, lines 8 and 9, which is clearly subject to the point of order in the language in which it is framed, which is explained to be a mistake, so the point of order might as well be sustained and then the gentleman can offer his amendment.

Mr. SHERMAN. Very good.

The CHAIRMAN. Very well; the point of order is sustained and the gentleman from New York offers an amendment.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

The Secretary of the Interior is hereby authorized to issue a patent to the Bureau of Catholic Indian Missions for the southeast quarter of the northeast quarter of section 6, township 28 north, range 24 east of the Indian meridian, Indian Territory, the same having been set apart to the Roman Catholic Church for church and school purposes by the Quapaw National Council, on August 24, 1893, and said church having maintained a church and school thereon since that date.

Mr. MONDELL. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The Clerk will report the amendment.

Mr. MONDELL. The amendment is at the end of line 10, page 34.

The Clerk read as follows:

That the Secretary of the Interior is hereby authorized and directed to issue a patent to the Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America for and covering the following-described lands, amounting to approximately 160 acres, now and for many years reserved for and occupied by the said board of missions as an Indian school, to wit: The northwest quarter of the southeast quarter, the north half of the southwest quarter, and the southwest quarter of the southwest quarter of section 8, township 1 south, range 1 west of the Wind River meridian, on the Wind River Reservation, in Wyoming: *Provided*, That the said patent shall not issue until the Indians of the said reservation have given their consent to the grant through their business committee or council in such manner as the Secretary of the Interior shall provide.

Mr. SHERMAN. I raise the point of order that this amend-

ment is not germane to this portion of the bill. We are now under the State of Oklahoma. The amendment should be offered when we reach Montana.

Mr. MANN. Mr. Chairman, I reserve the point of order on the merits of the amendment, then.

Mr. MONDELL. I withdraw the amendment, Mr. Chairman, for the present.

The Clerk read as follows:

For interest on $200,000, at 5 per cent, per second article of treaty of October 21, 1837, $10,000.

Mr. McGUIRE. Mr. Chairman, I offer the amendment which I send to the Clerk's desk.

The CHAIRMAN. The gentleman from Oklahoma offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 36, in lieu of lines 1, 2, and 3, insert:
"And the Secretary of the Interior is hereby authorized and directed to pay per capita to the Sac and Foxes of the Mississippi tribe of Indians in the State of Oklahoma the balance of the Sac and Fox of the Mississippi and Oklahoma trust fund now to their credit in the United States Treasury, under such rules and regulations as he may prescribe."

Mr. FITZGERALD. Mr. Chairman, I reserve a point of order on that.

Mr. McGUIRE. Mr. Chairman, this amendment is one passed upon by the committee. It is the unanimous report of the committee, and it is recommended by the Secretary of the Interior. The Sac and Foxes are Indians in an advanced state of civilization. I think they have about $800,000 besides this $200,000 which comes from the sale of their lands. My judgment is, in view of the state of civilization attained by these Indians, they ought to be paid all their money. They would be better citizens if they had all their money.

Mr. FITZGERALD. Mr. Chairman, there is a dispute about the ownership of this money, is there not?

Mr. McGUIRE. As to the Sac and Foxes?

Mr. FITZGERALD. Yes.

Mr. McGUIRE. Well, there is some dispute between the Indians in Oklahoma and the Indians in Iowa.

Mr. FITZGERALD. And there is some litigation pending as to the disposition of that fund?

Mr. McGUIRE. As to a certain amount of money, but there is, I think, about $800,000 left after this.

Mr. FITZGERALD. My recollection is the claim of the Sac and Foxes of the State of Iowa is much in excess of the amount of money that would be left if this money is distributed.

Mr. McGUIRE. If the gentleman will pardon me, he is mistaken, I think, about that. There is about $800,000 left, I am advised.

Mr. FITZGERALD. I may be mistaken. It is some time since I refreshed my recollection, but will the gentleman state the amount involved in this litigation between the Iowa Sac and Fox Indians and the Oklahoma Sac and Fox Indians?

Mr. McGUIRE. I do not remember just at the moment, but my recollection is it is about $300,000.

Mr. FITZGERALD. It seems to me that my recollection is equally as good as the gentleman's recollection.

Mr. McGUIRE. I think perhaps that is true. I do not know why it should not be. I am not disputing the proposition.

Mr. FITZGERALD. Until I have an opportunity to satisfy myself on my own investigation I shall insist upon the point of order.

Mr. McGUIRE. Then, Mr. Chairman, may this be passed until the gentleman from New York has an opportunity to investigate?

Mr. FITZGERALD. I imagine that this bill will be enacted into law by that time.

Mr. McGUIRE. I do not know how long it would take the gentleman to investigate.

Mr. FITZGERALD. I am not sure, I will say to the gentleman from Oklahoma; except I will say that items of this character on these appropriation bills should be in the bills, so that Members will have an opportunity to investigate them at their leisure and not be compelled to devote time they desire to utilize in other ways in attempting to straighten out their recollection.

Mr. McGUIRE. I desire to say it is no fault of the Indians. They ought to have the money. It is theirs by right. It is held only in trust by the Government of the United States. They would be better Indians and better citizens if they had all their money.

Mr. FITZGERALD. There is a great difference of opinion as to whether they should have it or not. I am of this opinion, based upon my investigations, that when we finish dividing the trust funds of the Indians we will then support them out of the general funds in the Treasury.

Mr. McGUIRE. I ask the gentleman if he knows anything about the Sac and Fox Indians of Oklahoma? They are good farmers in the adjoining county to the one in which I live.

Mr. MANN. If they are good farmers, what do they want with the money?

Mr. McGUIRE. What does anybody need their money for, whether red or white?

Mr. MANN. If they are good farmers, why do they need this money?

Mr. McGUIRE. Because they are entitled to it.

Mr. MANN. Is it not a question as to whether they are entitled to it or not?

Mr. McGUIRE. They are entitled to it under the law.

Mr. FITZGERALD. Oh, no; the gentleman is mistaken.

Mr. McGUIRE. It is held by the Government of the United States in trust for them. This money was received for lands sold by these Indians, and this was by their treaty left with the Government until they called for it, and they call for it now.

Mr. FITZGERALD. The gentleman is clearly mistaken.

Mr. McGUIRE. I do not know whether that is so.

Mr. FITZGERALD. This money was left with the Government to be utilized for the benefit of the Indians as the Government thought best.

Mr. McGUIRE. Under treaty stipulation.

Mr. FITZGERALD. Nobody would ever contend that the ward of a guardian has the right to demand the money that is held in trust for him. Now, I would not be willing to have a fund of $200,000 distributed among Indians until at least a careful investigation has been made as to all the conditions surrounding the distribution.

Mr. McGUIRE. But I will say that in this case a careful investigation has been made by the Interior Department, and I am perfectly conversant with the situation there.

Mr. FITZGERALD. The gentleman may be correct that the Interior Department has made a careful investigation, but the gentleman certainly does not mean to say that he has made an investigation recently. I have been interested in the various claims to this fund. My recollection is not very fresh about it, as it is some years since I looked into the matter. The gentleman says he has made a thorough investigation of the matter. His recollection is not very keen. I admit that I have not looked into it for about four years. I can say to the gentleman that I have seen, personally, some of the Sac and Fox Indians in Oklahoma and have seen what they have been doing.

Mr. McGUIRE. The gentleman has made a trip through Oklahoma?

Mr. FITZGERALD. Oh, yes.

Mr. McGUIRE. How many times has he been there?

Mr. FITZGERALD. Only once.

Mr. McGUIRE. How long has it been; how long since you were there?

Mr. FITZGERALD. Seven years.

Mr. McGUIRE. Does the gentleman know that he saw any of the Sac and Fox Indians?

Mr. FITZGERALD. I saw them on that trip; maybe not in the State, but in some parts where I was. I am willing to confess that my recollection may be at fault; that I can not recall the facts with great accuracy; it may be that the gentleman is in the same position.

Mr. McGUIRE. I am very glad the gentleman has such a clear conception of my knowledge of the condition of these Indians and their requirements. There are some things I confess in reference to the amount of the money that is claimed by the Iowa Sac and Fox. I may not have a correct recollection as to the amount of the claim of the Sac and Fox of Iowa against these Indians, or the amount in dispute, but I am ready to say at this time that it is by no means what these Indians have in the Treasury of the United States held in trust for them, and that there is an abundance of money left if this appropriation is made to satisfy any debt or any claim the Iowa Sac and Fox may have against the Oklahoma Indians.

Mr. STEPHENS of Texas. Is there any litigation pending for this fund? I believe there is a litigation of the Sac and Fox of Iowa, and as I understand they have been turned down by the Department. In what court is that litigation pending?

Mr. McGUIRE. I am not prepared to say.

Mr. STEPHENS of Texas. And what is the amount involved?

Mr. McGUIRE. I think about $300,000.

Mr. STEPHENS of Texas. Would that interfere with what you are asking here?

Mr. McGUIRE. It would not interfere in any way with the amount we are asking for here.

The CHAIRMAN. Does the gentleman from New York insist on the point of order against the amendment?

Mr. FITZGERALD. I do.

The CHAIRMAN. Does the gentleman from Oklahoma care to be heard on the point of order?

Mr. McGUIRE. I do not.

The CHAIRMAN. The Chair sustains the point of order, and the Clerk will read.

The Clerk read as follows:

For interest on $800,000, at 5 per cent, per second article of treaty of October 11, 1842, $40,000: *Provided*, That the sum of $1,500 of this amount shall be used for the pay of a physician and for purchase of medicine;

In all, $51,000.

Mr. McGUIRE. Mr. Chairman, I offer the amendment which I ask the Clerk to report.

The Clerk read as follows:

After line 10, page 36, insert:

"That the Secretary of the Interior is hereby authorized and directed to pay per capita to the Iowa tribe of Indians in the States of Kansas and Oklahoma, under such rules and regulations as he may prescribe, the balance of the Iowa trust fund in the United States Treasury: *Provided*, That the Oklahoma branch of Iowas shall receive such an amount of this trust fund as will equalize for them the payment made to the Kansas branch under the act approved May 27, 1902 (32 Stat. L., 267)."

Mr FITZGERALD. I reserve the point of order on that.

Mr. McGUIRE. Mr. Chairman, this is a committee amendment, passed unanimously by the committee and recommended by the Secretary of the Interior.

The large majority of these Iowa Indians,I think eighty-eight in number, are good farmers. They desire the rest of their money. I think this includes all the money held in trust by the Government of the United States for them.

Mr. TAWNEY. What is the amount of money?

Mr. MANN. The gentleman, of course, is well aware that members of the committee can not tell by hearing an amendment of that sort read—at least, I can not—what it means. Will the gentleman tell us? That is one trouble about offering these amendments without having them printed.

Mr. TAWNEY. I should like to have the gentleman answer the question I asked him as to the amount of the trust fund that remains in the possession of the Government.

Mr. McGUIRE. The amount of it is $78,000. This is recommended by the Interior Department.

Mr. MANN. What is it that is recommended? I could not tell by hearing the amendment read.

Mr. McGUIRE. The amendment provides for giving these Indians the $78,000 yet remaining in the Treasury of the United States, dividing it in severalty among them.

Mr. MANN. What Indians?

Mr. McGUIRE. The Iowa Indians in Oklahoma. There are only eighty-eight of them.

Mr. SHERMAN. This fund is rather different from the one we passed a moment ago.

Mr. MANN. Has this any relation to the other?

Mr. SHERMAN. None at all. The fund that the gentleman has reference to has already been capitalized. It requires no appropriation at all. The other fund did. This proposition—if the gentleman from New York [Mr. FITZGERALD] will give me his attention, as I understand he is interested in this—is not to capitalize the fund. This is a fund that has already been capitalized, and the proposition of the gentleman from Oklahoma is to distribute the fund that has been capitalized.

Mr. FITZGERALD. It is utterly impossible to ascertain what it is from the reading of the amendment. It provides for the equalization of payments and many other things. I am inclined to feel that, as a Member of the House, I am entitled to an opportunity to know what is proposed to be done with these funds, and I intend to make an effort to investigate them to my own satisfaction. If these items were presented to the Committee on Indian Affairs in time, in a proper way, and the committee passed on them unanimously, they would be in this bill, and Members of the House would have ample opportunity to investigate and satisfy themselves. Unless Members take the precaution to give such opportunities they may have to suffer the disadvantage of having their items go over until Members can investigate them.

The CHAIRMAN. Does the gentleman from New York make the point of order? The gentleman has already reserved the point.

Mr. FITZGERALD. If the discussion has ended, I make the point of order.

Mr. McGUIRE. I have no disposition to discuss it further if the gentleman is going to insist on his point of order.

Mr. FITZGERALD. I make the point of order.

The CHAIRMAN. The chair sustains the point of order. The Clerk will read.

The Clerk read as follows:

For clerical work and labor connected with the leasing of Creek and Cherokee lands, for mineral and other purposes, and the leasing of lands of full-blood Indians under the act of April 26, 1906, $40,000: *Provided*, That the sum so expended shall be reimbursable out of the proceeds of such leases and shall be equitably apportioned by the Secretary of the Interior from the moneys collected from such leases.

Mr. DAVENPORT. Mr. Chairman, I make the point of order to the proviso beginning in line 23 and extending to the end of line 26 on the ground that it is new legislation and contains a change of existing law and the treaty with the tribes. I make it as to the entire proviso.

Mr. SHERMAN. Mr. Chairman, it seems to me that that can not go out on a point of order. We are proposing here to appropriate, to do certain work for the benefit of certain Indians, certain funds that are to come into our hands for these Indians. We are to be the trustee for them. We are acting for them. Now, we propose to do certain work for them and to advance the money to do that work with, and when the work is completed to reimburse ourselves out of the money that comes from that fund. I do not quite see upon what theory the gentleman figures that that proviso is obnoxious to the rule.

Mr. DAVENPORT. I would like to ask the gentleman a question.

Mr. SHERMAN. Very well.

Mr. DAVENPORT. I would like to ask the gentleman if in the act of Congress providing that the full bloods could lease their lands with the approval of the Secretary of the Interior, if that same act does not provide that the Government shall furnish the machinery without taking any money from any fund for that purpose?

Mr. SHERMAN. There was no such specific provision or agreement whatever.

Mr. DAVENPORT. Does not the law say that it shall be done with the approval of the Secretary of the Interior?

Mr. SHERMAN. It does.

Mr. DAVENPORT. Does it not appropriate money of the Government to put it in force?

Mr. SHERMAN. To start the machinery, it does.

Mr. DAVENPORT. Does the gentleman believe that it is right or fair or equitable to take from the lessors the royalty that may come into the hands of the Indian agent, royalties derived from the development of the property, to pay the clerical force for leasing the land?

Mr. SHERMAN. I think it is fair, and I usually look at all these matters from the point of view of the Indian. My leaning is toward the Indian and against the Government so far as the expenditures in their behalf are concerned; but I do think it is fair, after we have expended hundreds of thousands of dollars, aye, a million dollars, for the benefit of these Indians down in the Territory, after we have brought conditions down there to a higher state than they were ever in before, after we have cared for the Indians, provided a force covering a period of more than a dozen years to perfect allotments to them and assisted them in every way, in the way of schooling and all that—I do think it is fair that now we should provide that some portion of this be refunded to the United States. My only regret is that we have not long ago provided that a part of this expenditure for the Territory should be reimbursable to the Treasury.

Mr. DAVENPORT. Let me ask the gentleman if from the beginning of the treaty of 1833 up to the present time there has ever been a dollar expended for either of the Five Civilized Tribes that was not carried in the original agreement with them for the sale of lands east of the Mississippi?

Mr. SHERMAN. Oh, the gentleman covers a whole lot of time about which I can not speak, but I know we have expended money amounting to more than a million dollars for these Indians that was not provided directly and specifically by any treaty obligations.

Mr. DAVENPORT. Will the gentleman state for the information of the House in what branch of the department it was spent?

Mr. SHERMAN. Mr. Chairman, if I may have a minute or two. Fifteen years ago we found a situation in the Indian Territory which was deplorable. We found that a condition of disorder and unrest was prevalent; that crime was rampant; that debauchery, fraud, and corruption were prevalent on every hand. We found there a Territory with Indians on thousands of acres of the most fertile land within the boundaries of the United States; lands that produced oil and coal and minerals and lumber, producing almost anything that you could produce on the most fertile soil in this country, and peopled by these so-called "civilized Indians."

We found it was necessary to step in and no longer let this situation blot our civilization. We found we could not longer

tolerate that condition of things which stood as a wall opposing progress. Before I had anything to do with Indian affairs Congress saw fit to provide for a Commission for the Five Civilized Tribes, early known as the "Dawes Commission." That Commission proceeded to the Territory and for a half dozen years or less made every attempt to negotiate treaties with the various tribes, and they, of their own volition or misguided by their white brothers who had come in there to feed off their ill-gotten gains from the Indians, blocked every attempt to negotiate treaties with them. Then Congress, finally taking the position that it had the right to legislate in any matter wherein the best interests of the Indians were at stake, legislated in reference to breaking up the tribal relations and allotting the land down there to the individual members of the several tribes, and when finally those tribes discovered that the strong arm of the Government was raised, that they no longer could continue their career of debauchery and crime, which reached to the extent of corruption, even to the selling of their own rights—selling rights which were of great value for trifling sums in cash; when they discovered that the Government was determined to wipe out that pest hole, then the Five Civilized Tribes finally, in 1898, entered into agreements with the United States Government.

Mr. DAVENPORT. Will the gentleman answer me this question——

Mr. SHERMAN. Yes. I had not got through, but I am always ready to stop.

Mr. DAVENPORT. I want to ask the gentleman if there was an acre of land held by any of the Five Civilized Tribes when the original act was passed in 1893 that was not directly bought and paid for by their having sold lands in the Eastern and Southeastern States.

Mr. SHERMAN. They had title to all the 6,000,000 acres of land in the Territory. There is no question about that.

The CHAIRMAN. The committee will rise informally.

LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATION BILL.

The Speaker having resumed the chair, Mr. BINGHAM, from the Committee on Appropriations, reported the bill (H. R. 16882) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1909, and for other purposes, which was read a first and second time and, with the accompanying papers, referred to the Committee of the Whole House on the state of the Union and ordered printed.

Mr. BURLESON. Mr. Speaker, in the absence of the gentleman from Georgia [Mr. LIVINGSTON], I desire to reserve all points of order.

The SPEAKER. The gentleman from Texas reserves all points of order.

Mr. BINGHAM. Mr. Speaker, I desire to state that I shall call up the bill immediately upon the conclusion of the Indian appropriation bill now under consideration.

Mr. KEIFER. Mr. Speaker, I wish in that connection to give notice that my former notice with reference to taking up the pension appropriation bill at the conclusion of the hearing of the bill now under consideration is withdrawn, so that the pension appropriation bill will not be taken up until later.

The SPEAKER. The committee will resume its sitting.

INDIAN APPROPRIATION BILL.

Mr. SHERMAN. Mr. Chairman, we entered into agreements with the several tribes in 1898. We passed what has been called the "Curtis Act," providing that allotments be made to the Indians of the various tribes, providing that prior to those allotments we should determine who were the citizens of the various tribes entitled to share in the lands and in the funds of these Indians. We had made one or two supplementary agreements with the Indians, and we had proceeded through the proper administrative offices to change the situation in the Territory, so that we made it possible a year ago to add another star, to admit a new State to the Union, which never could have been done until conditions were absolutely changed from what they were when we entered the Territory in 1893. In doing all this, Mr. Chairman, we have expended almost two and a half millions of dollars, of which a trifling sum has been reimbursable to the Treasury of the United States. The work had progressed so far that two years ago we thought it possible to dispense with the Commission to the Five Civilized Tribes, and that was done. Changed conditions, made necessary by reason of added legislation and court decisions, induced us to extend the statutory provisions under which the Five Civilized Tribes Commission had theretofore acted, and these same provisions apply under the direction of the Secretary of the Interior, who was authorized to appoint a single Commissioner, and the work has been continued down to the present time.

So that to-day we have completed allotments to the tribe called the "Seminole tribe." We have done a majority part of the work necessary to allot for all the other tribes in the Territory—the other four tribes. A surplus of lands will exist amongst all the tribes save the Seminoles after allotment has been made to all the Indians. Provision has been made for the disposal of this surplus land. Allotment to the individual members of the various tribes has been equalized in value, and provision has been made that at the conclusion of allotment the balance of the land be sold, and that then all allottees shall have their allotments equalized. In other words, I should have said all lands have been or will be appraised, and any Indian whose allotment of 160 acres is worth $4,000, for instance, must have taken from his proportion of the trust funds enough so that that will be reduced to the general equalization valuation of an allotment. That work is now in progress. It will take from one to two years more, possibly three, to complete that work. Two or three years ago we passed the high-water mark of appropriation for this Service. This year the appropriation carried in the pending bill is less than one-half what it was two or three years ago.

Next year, I am glad to say, the appropriation may again be cut in two, and that not to exceed two more bills will carry any appropriation for this work in all human probability, and the question now raised by the gentleman from Oklahoma is that all of this labor, covering more than a decade, after the expenditure of two and a half million dollars for the benefit of these various tribes, the suggestion the gentleman from Oklahoma makes is that we are committing an outrage by providing that this sum of $40,000 be reimbursed from the sale of the surplus lands after allotments are concluded.

Mr. DAVENPORT. Will the gentleman allow me to ask a question?

Mr. SHERMAN. Certainly.

Mr. DAVENPORT. I would like to ask the gentleman whether that provision, if right and justice should enter into it, should not provide it may be reimbursed by charging a definite sum against the lessor and the lessee both. There are thousands of leases——

Mr. SHERMAN. It is to be reimbursed out of the surplus funds; it is not to be charged against the individual.

Mr. DAVENPORT. But, my dear sir, it is, and I can show where since June last they have collected more than $30,000—where they have paid the fiddler, so to speak——

Mr. SHERMAN. And they danced while they were paying.

Mr. DAVENPORT. No, sir; they had the other man's hand down in their pockets while they were paying.

Mr. SHERMAN. I think they have danced for a half dozen years at our expense, and I think it is time some portion should be reimbursed to the Treasury.

Mr. DAVENPORT. I would like to ask the gentleman this question. The gentleman and myself disagree upon that. I would like to ask the gentleman if you will report this as new legislation? I will be glad enough to discuss the question intelligently with you upon the floor of this House as to whether it has been at the expense of the Government of the United States or of the civilized tribes in that country.

Mr. SHERMAN. Oh, it is not new legislation. This is a provision in reference to a sum which is appropriated for expenditures during the next fiscal year, and that is all there is of it. Mr. Chairman, I ask for a ruling on the point of order.

Mr. DAVENPORT. I am willing.

The CHAIRMAN. Before ruling, because the question is of some embarrassment, owing to certain circumstances to which it is not necessary to allude, I will ask the chairman of the committee for some information. As I understand, the question is this. The embarrassment of the Chair is in determining exactly what existing law is. There was, as the Chair understands, passed in 1906 a statute which authorized the Indians to lease certain lands. That is correct, as the Chair understands it. If I make any misstatement, I hope the chairman of the committee will correct me.

Mr. DAVENPORT. The Chair is correct; it was April 26, 1906.

The CHAIRMAN. That authorized the Indians to lease these lands, but the Chair does not find in that bill any provision directing or authorizing the Government to be at the expense of that leasing, and furnish either the clerical work or labor. So the provision, to the Chair, seems to be merely an authorization by which the Indians could at their own trouble and at their own expense go on and make leases. Is that what the gentleman from Oklahoma understands the situation to be?

Mr. DAVENPORT. I beg the Chair's pardon. I did not understand the question.

The CHAIRMAN. That the law of 1906 merely authorizes the Indians themselves to make leases of this character?

Mr. DAVENPORT. That is the contention under the act of June 28, 1898, commonly known as the "Curtis Act," whereby it was provided that under certain conditions they might lease their holdings in that country.

The CHAIRMAN. The present bill, instead of leaving the Indians to do that themselves, makes an appropriation of the sum of $40,000 to pay the expenses of the work, the Government appearing and doing the work itself, and imposing as a condition that if the Government pays that expense the Government shall be repaid. Wherein does the gentleman from Oklahoma [Mr. DAVENPORT] claim that that changes the existing law? What change does that make in the law which is now on the statute book?

Mr. DAVENPORT. I make two contentions. If it does change the Curtis bill and the act of 1906, which provided it might be done with the approval of the Secretary of the Interior, then it is new legislation, appropriating money, and therefore has no business in the bill.

Mr. SHERMAN. It refers simply to an appropriation for the next fiscal year. It is not continuous. It has reference simply to this one appropriation.

Mr. DAVENPORT. It is an appropriation each year, and there is no law back of it to authorize it.

The CHAIRMAN. The gentleman from Oklahoma [Mr. DAVENPORT] is not making a point of order to the entire provision?

Mr. DAVENPORT. Only to that portion of the bill that enacts to appropriate the money of the lessors to pay the expense of the entire work of that clerical force.

The CHAIRMAN. He does not object to the Government advancing the money? He only objects to the Government being repaid for the advance?

Mr. DAVENPORT. If the Chair will excuse me, I have not gotten that far yet. When we get that far I will——

The CHAIRMAN. The Chair is asking for information now.

Mr. DAVENPORT. No; I do not at this time.

Mr. SHERMAN. The Chair has before him the act of 1906?

The CHAIRMAN. Yes; but we have not the Curtis bill to which the gentleman has referred.

Mr. SHERMAN (reading): "After the approval of this act, and so forth, leases and contracts shall be made in certain ways, subject to the approval of the Secretary of the Interior, and shall be absolutely void and of no effect without such approval."

The CHAIRMAN. Now, of course, that does not say how the expenses in connection with these leases are to be paid.

Mr. SHERMAN. Certainly not.

Mr. DAVENPORT. If the Chair will permit me, I will make this suggestion. Indeed, it does not, because there is a general appropriation each year, and has been ever since we had a Secretary of the Interior, to meet the expenses of his office and of his clerical force.

The CHAIRMAN. Does the gentleman from New York [Mr. SHERMAN] claim that under the law as it is in force to-day the Secretary of the Interior, if he incurred these expenses, would have any right to take the amount thus spent out of the moneys received from the leases?

Mr. SHERMAN. Not without authority from the Congress so to do; no.

The CHAIRMAN. Then how does the gentleman claim that that does not change the law now existing?

Mr. SHERMAN. But, Mr. Chairman, this is an appropriation simply for the coming fiscal year. That is all. And we appropriate for next year for certain work to be done. And then we say, "Done during that year," practically as a limitation on the appropriation, that the money so expended shall be reimbursed to the Treasury from the proceeds derived from the leases over which the Secretary of the Interior has exercised supervisory power.

Mr. MANN. Will the gentleman yield for a question?

Mr. SHERMAN. Yes.

Mr. MANN. Has the Government any control over the proceeds of these leases?

Mr. SHERMAN. No.

Mr. MANN. Then here we are taking control over them.

Mr. SHERMAN. We are reimbursing ourselves from the funds derived from a certain process for work which we have undertaken to do as a part of the process.

Mr. MANN. Yes; but we do some work for the man voluntarily and then take our pay out of the money that passes through our hands that belongs to him. If that does not change the law I do not know what would.

Mr. FLOYD. Will the gentleman from New York [Mr. SHERMAN] yield for a question?

Mr. SHERMAN. I will.

Mr. FLOYD. Is there any provision in the annual appropriation bill providing that the Government shall be reimbursed in the same way as provided in this bill?

Mr. SHERMAN. Yes; I think so. I want to see positively. Let me look for one moment. Yes; in the last appropriation bill there was precisely this provision.

The CHAIRMAN. Where is that found?

Mr. SHERMAN. It is on page 36 of the law—the Indian appropriation act passed in 1907 and expiring the 1st of July next.

The CHAIRMAN. What section does the gentleman read from?

Mr. SHERMAN. Why, it is the section just precisely as this is. I will send it to the Chair in just a second. The Clerk will hand it to the Chairman.

The CHAIRMAN. Does the gentleman from New York think that provision changing the law last year would extend over to the law of the present year?

Mr. SHERMAN. The gentleman from New York suggested the other day to the Chair that various Chairmen of the Committee of the Whole had so ruled heretofore, but the present occupant the other day held it different.

The CHAIRMAN. In reference to the particular case the present occupant of the chair ruled on the other day the Chair feels very confident, but the present one is very embarrassing. The gentleman claims no authority of law except such as the clause contained in the bill of last year.

Mr. SHERMAN. I claim no other provision.

The CHAIRMAN. Well, the Chair is ready to rule, and though he is very loath himself to so rule, yet, after consultation with a gentleman who is an excellent authority and who seems to be very clear, the Chair sustains the point of order.

The Clerk read as follows:

For clerical work and labor connected with the sale of inherited and other lands, Five Civilized Tribes, $15,000: *Provided*, That the sum so expended shall be reimbursable out of the proceeds of such land sales, and shall be equitably apportioned by the Secretary of the Interior from the moneys collected from such sales.

Mr. DAVENPORT. I desire to make the point of order on the proviso, commencing with the word "*Provided*," in line 3.

Mr. SHERMAN. Let me ask the gentleman if he would like to strike out the whole provision?

Mr. DAVENPORT. No, sir; but I want the proviso stricken out, and I will answer the gentleman by saying that we do not want the Secretary of the Interior to be permitted to go on and sell these inherited lands, because we have courts of equity and of law where they are just as competent to take care of the interests of these people as the Secretary of the Interior, who is 1,600 miles away.

Mr. SHERMAN. But we have already provided the terms under which these lands shall be disposed of, and we have already placed that under the authority of the Secretary of the Interior.

Mr. DAVENPORT. I claim that they should have their affairs administered as any other American citizen would have in the courts that are there established.

Mr. SHERMAN. Mr. Chairman, I assume the Chairman's ruling will be the same as on the last proviso, and I shall not attempt now to induce him to change his opinion.

The CHAIRMAN. The point of order is sustained.

The Clerk read as follows:

To enable the Secretary of the Interior to carry out the provisions of the act approved April 21, 1904, for the removal of restrictions upon the alienation of lands of allottees of the Five Civilized Tribes, $25,000: *Provided*, That so much as may be necessary may be used in the employment of clerical force in the office of Commissioner of Indian Affairs.

Mr. MANN. Mr. Chairman, I reserve the point of order on the proviso.

Mr. SHERMAN. Mr. Chairman, there are no clerks now employed in the Indian Office under this proviso, and I do not know that any will be.

Mr. MANN. Then I make the point of order upon the proviso.

Mr. SHERMAN. I shall concede that the point of order is well taken, of course.

The CHAIRMAN. The point of order is sustained.

The Clerk read as follows:

That the Secretary of the Interior be, and he is hereby, authorized to make such contract as in his judgment seems advisable for the care of orphan Indian children of the Five Civilized Tribes, and for the purpose of carrying this provision into effect the sum of $10,000, or so much thereof as is necessary.

Mr. STEPHENS of Texas. I offer an amendment, Mr. Chairman, and I desire to state that the amendment is subject to the point of order, but I hope it will not be made, for the reason that a great many people are entitled to citizenship, and they could possibly, by a continuance of the acts of August 15,

1894, and June 30, 1895, have their names restored to the rolls. A great many of them have already obtained judgment in the courts of the Indian Territory. These judgments have been stricken from the rolls by the court recently appointed and known as the "citizenship court," and therefore I desire to offer this amendment for the purpose of placing these individuals back on the rolls.

Mr. MANN. Mr. Chairman, I do not wish to lose any rights by having the amendment debated before it is presented.

Mr. STEPHENS of Texas. I understand the gentleman from the Iroquois tribe of Chicago would make the objection to the amendment, and if not he, the chief from Tammany would.

The Clerk read as follows:

Amend, at end of line 9, page 38, by adding the following, viz:

"That the provisions of an act approved February 6, 1901 (chapter 217, United States Statutes at Large, Fifty-sixth Congress), entitled 'An act amending the act of August 15, 1894, entitled "An act making appropriations for current and contingent expenses of the Indian Department and fulfilling treaties and stipulations with various Indian tribes for the fiscal year ending June 30, 1895, and for other purposes,"' be, and the same is hereby, extended to any person claiming any right in the common property of the Choctaw or Chickasaw Indians or tribes; and in order to make said act applicable to any person claiming any such right in said property said act is hereby amended to read as follows:

"SEC. 2. That all persons who are in whole or in part of Choctaw or Chickasaw blood or descent, and who are entitled to share in the common property of the Choctaw or Chickasaw Indians under any treaty with said Indians or law of Congress, or who claim to be so entitled under any treaty, grant, agreement, or act of Congress, or who claim to have been unlawfully denied or excluded from participating in the common property of the Choctaws or Chickasaws to which they claim to be lawfully entitled by virtue of any treaty, grant, agreement, or act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district or circuit court of the United States; and said district and circuit courts are hereby given jurisdiction to hear, try, and determine any action, suit, or proceeding arising within their respective jurisdiction and involving the right of any person, in whole or in part of Indian blood or descent, to share in the common property of said Choctaw or Chickasaw Indians under any treaty, grant, agreement, or law of Congress (and in said suit the parties thereto shall be the claimant as plaintiff, and the Choctaw and Chickasaw nations or tribes jointly as party defendant); and the judgment or decree of any such court in favor of any claimant to share in the common property of said tribes shall have the same effect, when properly certified to the Secretary of the Interior, as if such judgment or decree had been allowed and approved by him: *Provided*, That the right of appeal shall be allowed to either party as in other cases, and that no act of Congress or agreement limiting the time in which an application or assertion of right should be made shall operate to defeat the rights of any person entitled to share in the said common property under any treaty with or grant to said Indians.

"SEC. 3. That the plaintiff shall cause a copy of his petition, filed under the preceding section, to be served upon the district attorney of the United States in the district wherein suit is brought, and shall mail copies of same, by registered letters, to the principal chief or governor of the Choctaw and Chickasaw nations, respectively, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letters. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Choctaw and Chickasaw nations in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case, to file a plea, answer, or demurrer on the part of the Indian governments or tribes, and to file a notice of any counter claim, set-off, claim for damages, or other demand or defense whatsoever in the premises: *Provided*, That should the district attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court.

"SEC. 4. That whenever it shall appear to the satisfaction of the court in which the proceedings has been instituted that there is in the possession of any Department of the Government or of any bureau, division, or commission thereof or thereunder, any record or records material to the proper determination of the issue being heard, or about to be heard, the head of the Department in which such record is kept shall, upon request of the judge of said court, transmit a certified copy of the record or records on file in his Department to the clerk of the court to be used at the trial of the case without any charge therefor: *Provided further*, That all records in the possession or custody of any Government officer or Department or division, bureau, or commission thereof or thereunder pertaining or appertaining to the rights of any such claimant shall, upon request of the claimant or his authorized attorney, be open to inspection: *Provided further*, That all suits brought under the provisions of this act shall be commenced within six months after the passage of this act, and the court, upon the request of either the plaintiff or defendant, shall advance any suit instituted under the provisions of this act on the dockets thereof to as early hearing as is consistent with the rights of the parties and the interests involved."

Mr. SHERMAN. Mr. Chairman, I raise the point of order against the amendment. It is a sweeping legislative provision. I think it requires no argument to convince the Chair that it is subject to a point of order.

Mr. STEPHENS of Texas. Mr. Chairman, I desire to extend my remarks in the RECORD and to file a brief and argument.

The CHAIRMAN. The gentleman from Texas asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. STEPHENS of Texas. Mr. Chairman, this amendment is identical with a bill introduced by me in this Congress, H. R. 15649, The object of the bill is to afford an opportunity to about 10,000 persons, admittedly of Choctaw and Chickasaw Indian blood and descent, and who allege that they have a vested right in the common property of the Choctaw and Chickasaw Indians by reason of their Indian blood and descent, but have been denied their property rights by administrative officers charged by law with the duty of ascertaining their Indian blood and descent and determining their rights through:

1. Error of law;
2. Gross mistake of fact;
3. Fraud committed by said administrative officers to secure the benefits of the Act of Congress approved February 6, 1901, and which act is now in force in every State in the Union, and applicable to every Indian claimant, excepting only the members of the Five Civilized Tribes and the Quapaw Indians, which tribes were expressly excepted from the operations of said act. The Choctaws and Chickasaws are in the "Five Civilized Tribes."

Mr. Chairman, I now desire, as part of my remarks, to submit the following statement and brief by attorneys for many persons seeking enrollment under my bill:

TREATY OF 1820 WITH CHOCTAWS.

On October 18, 1820, the United States Government, through its representatives regularly appointed, negotiated a treaty with the Choctaw Indians, then residing on their reservation, which formed a part of the territory included in the now States of Alabama and Mississippi, which treaty was duly ratified by the Senate of the United States and proclaimed as a law January 8, 1821 (7 Stat., 210). By Article one of said treaty the Choctaws ceded to the United States "a small part" only of their lands then occupied by them and situated East of the Mississippi River. (See preamble to treaty, Indian Laws and Treaties, vol. 2, p. 133.) By Article two of said treaty the Government ceded to the Choctaw Nation the identical lands the title to which is now in controversy, and certain additional lands, heretofore sold by the Choctaws and Chickasaws, the proceeds derived from which are also the subject of this controversy.

The object of the Government in entering into the treaty of 1820 and the cession of the Western lands to the Choctaw Nation was for the purpose of effectuating the removal of the Indians west of the Mississippi River, which object failed of accomplishment. The Government had not then determined upon a definite policy with reference to the removal of the Indians. The enactment of legislation for the removal of the Indians East of the Mississippi River was being persistently and strongly urged upon Congress by the people of the then States of the Union. The Presidents of the United States, in their annual and special messages to Congress, were repeatedly urging upon Congress the necessity of declaring, through appropriate legislation, a definite Indian policy which would accomplish the removal of all the Indians then located in the Eastern States to the territory west of the Mississippi River. President Jackson, in his annual message to Congress, under date of December 8, 1829 (Messages and Papers of the Presidents, vol. 2, pp. 256–259, inclusive), reviews the condition of the various Indian tribes, points out the necessity for the inauguration of a new policy, and recommends to Congress the enactment of legislation setting apart "an ample district west of the Mississippi * * * to be guaranteed to the Indian tribes as long as they shall occupy it. * * * There they may be secured in the enjoyment of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes."

ACT OF MAY 28, 1830.

In response to this message of President Jackson and in compliance with the demands of the people of the several States, Congress, at that session, passed the act approved May 28, 1830 (4 Stat. L., p. 411), providing for an exchange of lands with Indians, section 3 of which is as follows:

"SECTION 3. *And be it further enacted*, That in the making of any such exchange or exchanges, it shall and may be lawful for the President to solemnly assure the tribe or nation with which the exchange is made that the United States will forever secure and guarantee to them and their heirs or successors the country so exchanged with them; and, if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided, always*, That such lands shall revert to the United States if the Indians become extinct or abandon the same."

Under this act of Congress no title in fee simple to the Indians could be conveyed by the President of the United States. Every reservation west of the Mississippi River given an Indian tribe in exchange for the lands which the Indians held east of the Mississippi River was, under the provisions of this act of Congress, an exchange merely of the possessory right and did not and could not operate to pass a fee simple title. In every case where the Indian tribe or nation holds a fee simple title (as in the case of the Cherokees, Creeks, Seminoles, and other Indian tribes), the fee-simple conveyance was made pursuant to the express terms and provisions of special treaties with each of the Indian tribes.

The attempt on the part of the authorities of Alabama and Mississippi to enforce the State laws against the Choctaws and the encroachment of the white settlers upon their lands culminated in the Choctaws, on the 17th day of March, 1830 (and prior to the enactment of the act approved May 28, 1830), submitted to President Jackson a draft of a proposed treaty for the cession of all their lands east of the Mississippi River to the United States; the conveyance by the Government to them of a FULL AND PERFECT TITLE IN FEE SIMPLE to the western lands, and their removal thereto.

President Jackson redrafted the proposed treaty—making many changes and alterations in practically all of the articles except article 1, which provided for the conveyance of the western lands to the Choctaws—in which draft it was expressly stated that the title to be conveyed must be a FULL AND PERFECT TITLE IN FEE SIMPLE, and on the 6th day of May, 1830, he transmitted the two drafts of the proposed treaty, accompanied by a protest signed by certain persons

claiming to be full bloods, and a special message explanatory thereof, to the Senate of the United States, and requested the views of the Senate with reference to the terms upon which it might be advisable to conclude a treaty with the Choctaws. (Messages and Papers of the Presidents, vol. 2, p. 479.)

Articles 1 and 30 of the proposed treaty, as drafted by the Choctaws and transmitted to President Jackson, provided in part as follows:

"ARTICLE 1. The United States shall secure to the said Choctaw Nation of red people the perpetual peaceful possession of all that tract of country known and described in a treaty as the Choctaw land, west of the Mississippi River, embraced in the following lines and limits, viz: * * * and immediately on the ratification of this treaty a patent shall be issued by the President of the United States GRANTING AND TRANSFERRING to the said Choctaw Nation of Red People a FULL AND PERFECT TITLE IN FEE SIMPLE to all the land within the before-described limits, and FOREVER WARRANTING AND DEFENDING THE PEACEABLE POSSESSION OF THE SAME TO THE CHOCTAW NATION, THEIR DESCENDANTS, and CITIZENS.

* * * * * * * *

"ARTICLE 30. This treaty is the only proposition that the Choctaw Nation will ever make to the United States, and proposes the only terms on which the said nation will emigrate to the West; * * *."

Article 1 of the treaty proposed by the Choctaws, as amended by President Jackson and submitted to the Senate, was as follows:

"The United States shall secure to the said Choctaw Nation of red people the perpetual peaceful possession of all that tract of country known and described in a treaty as the Choctaw lands, west of the Mississippi River, embraced in the following lines and limits, viz:

* * * * * * * *

"And so soon after the ratification of this treaty as Congress shall authorize it a patent shall be issued by the President of the United States GRANTING AND TRANSFERRING to the said Choctaw Nation of Red People a FULL AND PERFECT TITLE IN FEE SIMPLE to all the land within the before-described limits, and FOREVER WARRANTING AND DEFENDING THE PEACEABLE POSSESSION OF THE SAME TO THE CHOCTAW NATION AND THEIR DESCENDANTS."

The Senate Committee on Indian Affairs stated in its report to the Senate that, after fully considering all the documents transmitted by the President relative to the proposed treaty with the Choctaws, it did not deem it admissible to recommend the ratification of the treaty, for, among other reasons, that one of the documents transmitted was a protest from one of the districts of the Choctaw Nation; that as the treaty had not been negotiated by Government officers after a poll of the nation, the committee had no way of knowing what percentage of the Choctaw people were in favor of making any treaty with the United States, and therefore recommended that the Senate advise the President by resolution not to "make or ratify" the proposed treaty. On May 27, 1830, the Senate adopted the following resolution:

"Resolved, That the Senate do advise the President of the United States not to make or ratify the treaty which the Choctaw Indians have proposed in the project submitted to him dated the 17th day of March, 1830, and which accompanied his message to the Senate on the 6th instant." (Executive Journal, vol. 4, p. 111.)

PRESIDENT JACKSON'S REPRESENTATIONS TO THE CHOCTAWS AND CHICKASAWS.

President Jackson thereafter advised the Choctaws of the action of the Senate and informed them that he would meet the Choctaws and Chickasaws at Franklin, Tenn., and personally inform them of the policy and intentions of the Government, in order that a treaty might be negotiated which would be acceptable to the Senate.

President Jackson, accompanied by Secretary of War John H. Eaton and Gen. John Coffee, arrived at Franklin, Tenn., on Monday, August 23, 1830. The Choctaws were not present. The Chickasaws, who were assembled, were addressed by President Jackson at some length, in which address the President urged the Chickasaws to consent to remove west of the Mississippi, and as an inducement to them pointed out that their new homes west of the Mississippi would be the property of THEM AND THEIR CHILDREN. The President said:

"Determine what may appear to you best to be done for the benefit of yourselves and your children. The only plan by which this can be done, and tranquillity for your people obtained, is that you pass across the Mississippi to a country in all respects equal, if not superior, to the one you have. Your Great Father will GIVE IT TO YOU FOREVER, that it may belong to YOU AND YOUR CHILDREN, while you shall exist as a nation, free from all interruption." (Senate Doc. 512, vol. 2, p. 240, 23d Cong., 1st sess.)

On the 26th of August the President and his associates met the Chickasaw delegates. J. McLish, Secretary of the Chickasaw Nation, delivered the reply of the Chickasaws to the address of the President, in part, as follows:

"FRIENDS AND BROTHERS: Our Father, the President, has communicated to us through you (Major Eaton and General Coffee) his earnest desire to make us a prosperous and happy people. To accomplish this great object, that is to us so desirable, he proposed to give us a country west of the Mississippi in exchange for the country we now possess, IN FEE SIMPLE, or, to use his own words, 'AS LONG AS THE GRASS GROWS AND WATER RUNS.'" (Senate Doc. 512, vol. 2, p. 244, 23d Cong., 1st sess.)

President Jackson then instructed his Commissioners, Secretary of War John H. Eaton and Gen. John Coffee, to continue the negotiations with the Chickasaws, and then proceed to Mississippi and conduct negotiations with the Choctaws, with the object in view of entering into treaties with both tribes, and especially instructed his Commissioners "TO ACT LIBERALLY TOWARD THEM."

On September 15, 1830, Secretary of War John H. Eaton and Gen. John Coffee arrived at the Indian agency at Dancing Rabbit Creek, Mississippi, in pursuance of the instructions of President Jackson. Negotiations looking to the formulation of a treaty with the Choctaws were immediately thereafter commenced. (Journal of Proceedings, Senate Doc. 512, vol. 2, p. 251, 23d Cong., 1st sess.)

On September 18, 1830, Secretary of War John H. Eaton and Gen. John Coffee advised the Choctaws at the treaty grounds as follows:

"BROTHERS: We have come a considerable distance to meet you, under the direction of your Great Father. He had invited you to meet and shake hands with him in Tennessee, that, AS A FRIEND AND A FATHER, HE MIGHT SPEAK WITH YOU. He was informed at Washington City that you desired it. Arriving at home, he sent Major Donley to you with news of his wishes, of his desire to converse with you on matters of deep and lasting interest to your nation. You refused to come, and returned for answer that you could not. Well might your Great Father then have said: 'I will no more try to preserve you, but leave you to live as you can under the laws of the States.' When thus he was about to determine to leave you and no more persuade you to a course of happiness, a messenger reached him, bearing from two of the three districts of your nation a memorial entreating that Commissioners might be sent. ANXIOUS STILL FOR THOSE WHO HAD FOUGHT BY HIS SIDE IN BEHALF OF HIS COUNTRY, he determined to yield that request and to send those who would SPEAK HIS WISHES FREELY AND CANDIDLY, and thereby prove the desire he entertained to preserve you, notwithstanding his previous friendly offers had been rejected.

* * * * * * * *

"BROTHERS: In 1820, by a treaty made with you at Doak's Stand by your present Great Father, an extensive and fine country was GIVEN TO YOU FOR THE USE OF YOUR PEOPLE. It was a gift to you, for the country you ceded to the United States was paid for fully. It was the understanding at the time that the Choctaws would remove; and on that account was it that a large, salable, and fertile country was provided for your nation and your people. Ten years have passed by and you are still here. The country intended for you yet remains wild and unsettled.

"BROTHERS: A fertile country beyond the Mississippi, and another possessed here, is more than you should expect. If you will not remove other Indian tribes may desire to do so; and, where they shall elect to settle, a home must be furnished; others wanting it, the country should not remain a desert. YOU MUST DECIDE WHICH YOU WILL TAKE AND WHICH YOU WILL LIVE UPON; BOTH COUNTRIES YOU CAN NOT POSSESS—IT IS UNREASONABLE TO EXPECT IT. If you prefer to live under our laws and customs, remain and do so, AND SURRENDER THE LANDS ASSIGNED TO YOU WEST OF THE MISSISSIPPI, or otherwise remove to them. THERE YOUR GREAT FATHER CAN PROTECT YOU; and there undisturbed and uninterrupted by the whites, you can enjoy yourselves and be happy, now and for years to come. Rest assured you can not be so here. But, if you think differently, then continue where you are. After the present time we shall no more offer to treat with you. You have commissioners in your country for the last time. Hereafter you will be left to yourselves, and the laws of the States within which you reside; and, when weary of them, your nation must remove as it can, and at its own expense. Whatever you may determine upon, whether to remove or to remain, our earnest and sincere wishes are that you may be happy and contented. For you we have the best feelings; our complexions are different, but our hearts and our nature are the same. The Great Spirit above is our common Father; He has made us all and we are all His."

Wednesday, 22.—"The Commissioners met the council at 10 o'clock, the chiefs and their captains present, except Netuchache, who was reported to be sick from the bite of a spider. Order and silence being had, the Commissioners proposed, for their consideration and approval, the outlines of the treaty they were willing to enter into. It is as follows."

* * * * * * * *

"The chief, Leadstone, inquired if the present treaty was to be considered as retaining former treaties and their provisions, or as repealing all former treaties, and the present one only to be relied on? The answere was, that it was desirable fully to embrace everything; that the PRESENT MIGHT be considerd the ONLY TREATY that was to be looked to; that, excepting former annuities ALL PREVIOUS TREATIES WERE TO BE CONSIDERED AS REVOKED AND SET ASIDE. The council then separated."

Thursday, 23.—"This morning the Commissioners were informed that the Indian committee appointed to consider the terms proposed were about to reject them and refuse to treat; that it was represented to them there was but one spring—and only one—in the country west of the Mississippi; and that the laws of a State had already been extended over the Cherokees who had removed there.

"The Commissioners returned for answer that the representations were wholly incorrect; that there was no State near to where the Cherokees lived, or within many miles of them or the country owned by the Choctaws; that the information was by evil-minded persons, intended to deceive and to prejudice their minds, and requested that they would meet to receive their explanations. The answer was, that at 12 o'clock they would again meet in council, and desired the presence of the Commissioners."

Twelve o'clock—"The Commissioners attended at the council house and received, through the chairman of the committee, Peter Pitchlyn, their determination and report. They stated their great surprise at being informed their Father had understood they were in distress and dissatisfied, and were surprised at being informed they could not retain the lands which by the Treaty of 1820 had been secured to them; that they had concluded not to treat for a sale of their lands. The report being received, the Secretary of War rose and made an address to them verbally before the council; told them of their situation and condition, and the impossibility, on the part of their Great Father, to prevent the operation of the laws over them; that they had been badly advised, and were putting reliance in persons who, while they professed to be their friends, would be sure to forget them in the hour of difficulty and trial. Their object, he well knew, was to claim the best bargain they could, and the Commissioners were prepared to give them one, in all respects liberal, to the extent that they could hope the Senate of the United States would ratify. The Government intended this as the last treaty ever to be held with them, and it certainly was the last time that Commissioners would ever appear in their nation to talk with them on the subject. They had come as friends, and at their own request, to protect them from injury, not to cavil with them about prices. As for their lands, the Government cared nothing, for they had enough. Their object was merely the possession of the country, with out regard to anything of value or profit to be obtained from the sale of them. He called their attention to a printed letter to the War Department from two of three of their districts, and which two of their principal chiefs had signed, in which they had said most feelingly that they were distressed, and could not possibly live under the laws of the State, and begged that Commissioners might be sent to their nation to conclude a treaty. For them now to state differently showed their insincerity and deception. That thereafter their complaints would not be regarded, because they could not be confided in. The Secretary of War requested them to understand that their removal was to be a matter for their own reflection and judgment; unless they really believed, in consenting to emigrate, their happiness could be promoted, he begged them not to think of removing; that they must go freely and of their own accord or not at all. They had to-day declared that they were unwilling to remove. He supposed that they had arrived at the conclusion that they could remain where they were and live under the laws of Mississippi, and of course the Commissioners had nothing more to say or to advise. They would now take their leave and go home. It was a matter of regret, he said, that their judgment had

erred so much in the decision they had made. Throughout the language of all of them had been that they could not live under the white man's laws. If such was not their deliberate opinion, why had they avowed it, and why did they solicit the President to send Commissioners to treat with them when they could not but know it was attended with great expense? He said he well knew that many of them could live anywhere where he could; their education and intelligence authorized him to say and believe so; but the common, uninstructed Indian could not. For them to live under laws which they could neither read nor be made to understand was expecting too much. And what are they to do under the decision just pronounced? Will they resist the laws? The sheriff must enforce them. Will they oppose him with their guns and tomahawks? While the Choctaws could raise one warrior to resist there would be found one hundred or one thousand to one to oppose that resistance and to enforce the law. These are things which seriously they should have considered before their decision was pronounced. The Commissioners, he said, had nothing further to remark, but to take leave of them and go home, and accordingly they retired from the council.

"Shortly afterwards they were waited upon by several persons of the committee, with a request that they would not leave the treaty ground; that they had considered of the remarks which had been made to them, and had no doubt, if the Commissioners would remain a few days longer, that a treaty could be made. To this the Commissioners assented."

Saturday, 25th, 9 o'clock.—"The committee on the part of the Indians handed in a plan presenting the grounds upon which they were willing to treat. It contained various objectionable features, and among others a proposition to create a perpetual stock of $5,000,000 at an interest of 5 per cent, but redeemable at the pleasure of the Choctaw Nation after twenty years. The Commissioners returned for answer that the terms had been fully considered and that some of them were inadmissible, but that at 11 o'clock they would meet the chiefs and warriors in council and state to them there what they were willing and disposed to do."

Eleven o'clock.—"The council met; present, the Commissioners, three chiefs, captains, and warriors of the nation, when the following terms were proposed and interpreted.

* * * * * * *

"The foregoing having been read and explained, the three chiefs and others of the principal men addressed the council and urged the acceptance of the terms which were offered. The explanations being made, the council broke up."

Sunday, 26th.—"Some conference at the Commissioners' quarters took place this morning between the chiefs and some of the captains and headmen in which SEVERAL ALTERATIONS AND ADDITIONS WERE MADE TO THE TERMS PROPOSED."

Monday, 27th.—"A meeting at the council house took place to-day. The treaty as drawn up was submitted, interpreted, and explained, and at 1 o'clock it was signed." * * *

TREATY UNDER WHICH APPLICANTS CLAIM.

Articles 1 and 2 of the treaty as drafted by the Commissioners representing the Government of the United States and the changes and interlineations made before the treaty was signed, as shown by the original document on file in the office of the Secretary of State, are as follows:

"ARTICLE 1. Perpetual peace and friendship is pledged and agreed upon by and between the United States and the Mingoes, chiefs and warriors of the Choctaw Nation of Red People; and that this may be considered the * * * treaty existing between the parties all other treaties heretofore existing and inconsistent with the provisions of this are hereby declared null and void.

"ARTICLE 2. The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence * * * to the source of the Canadian fork; if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along the line to the beginning.

"The boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825. The grant to be executed as soon as the present treaty shall be ratified." [*Indicates matter scratched out.]

SPECIAL OBJECT IN USE OF WORD "DESCENDANTS."

It will be observed that President Jackson, Secretary of War John H. Eaton, and Gen. John Coffee, throughout their conferences and negotiations with the Indians, repeatedly solemnly assured the Indians that if they would treat with the United States and move to the western reserve, the Great Father, desirous of dealing liberally with his Indian children, "WILL GIVE IT TO YOU FOREVER, THAT IT MAY BELONG TO YOU AND YOUR CHILDREN," or "WE WILL GIVE IT TO YOU AND YOUR CHILDREN FOREVER IN FEE SIMPLE." It will further be observed that after the treaty had been drafted by the Secretary of War John H. Eaton and Gen. John Coffee, at the insistence of the Indians there was the following interlineation made in article 2: "The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River IN FEE SIMPLE TO THEM AND THEIR DESCENDANTS, TO INURE TO THEM WHILE THEY SHALL EXIST AS A NATION AND LIVE ON IT."

Why did the Indians insist upon the use of the word "descendants" when President Jackson, Secretary of War Eaton, and General Coffee had at all times been talking about the Choctaws and their CHILDREN? Because "DESCENDANTS" was the only word to be found in the vocabulary of the English language that would include "THEIR CHILDREN." The word "HEIRS," as technically used and defined, or any other word known to legal phraseology, WOULD HAVE EXCLUDED ALL THE CHILDREN OF THE THEN LIVING CHOCTAWS FROM PARTICIPATING IN THE PROPERTY. These people in 1830 were living in a state of nature, and continued to live in such a state for many years thereafter, as appears from the written decisions of our courts.

In the case of Wall *v.* Williamson (11 Ala., 839), tried in the year 1842, it appeared in evidence that, by the Choctaw law, the husband could dissolve the relationship at pleasure, and a marriage of this kind, within the limits of the tribe, was held valid.

The court further says:

"That marriage among the Indian tribes must be regarded as taking place in a state of nature; and if, according to the usages and customs of the particular tribe, the parties are authorized to dissolve it at pleasure, the right of dissolution will be considered a term of the contract."

In the same decision the court says:

"If permanency is to be regarded as an essential element of marriage by the law of nature, it is clear that all such connections which have taken place among the various tribes of North American Indians, either between persons of pure Indian blood or between half-breeds, or between the white and Indian races, must be regarded as mere illicit intercourse, and the offspring be considered as illegitimate; for it appears to be well established by historians and travelers, as well as by the reported testimony in judicial proceedings occurring in the courts of some of our States, that in most of the tribes, perhaps in all, the understanding of the parties is that the husband may dissolve the contract at his pleasure. In a work published by Mr. Schoolcraft concerning the manners and customs of the North American Indians, under the authority of the Government of the United States, the writer says: 'The marital rite is nothing more, among our tribes, than the personal consent of the parties, without requiring any concurrent act of priesthood or magistracy, or witness; the act is assumed by the parties without the necessity of any extraneous sanction except parental consent. Presents are, however, often made if the parties are able. It is also disannulled and the wife dismissed from the wigwam whenever the husband pleases, or the marital state is continued under the evils of discord or a state of polygamy. The latter is, however, the usual method among the hunter and prairie tribes. BUT THE TIES OF CONSANGUINITY ARE STILL STRICTLY ACKNOWLEDGED; CHILDREN BECOME POSSESSED OF THEIR NATURAL RIGHTS AND FAMILY TRADITION TRACES THESE TO THEIR REMOTEST LINKS.' In Robertson's History of America (book 4) the same peculiarity is noticed as characterizing the contract of marriage as it prevailed among the natives of South America."

In a statement of fact the court refers to the testimony of witnesses relative to the Choctaw tribal marital customs. It says:

"Another witness introduced by the plaintiff stated that he had inquired into and informed himself as to the laws and customs of the Choctaws. The tribe had no written laws. They married and unmarried at pleasure, a man frequently having several wives. When a man found a woman he wished to marry he made her a present of a blanket and she became his wife. When he wished to dissolve the marriage he abandoned her. The husband took no part of the wife's property by marriage, and she retained all the rights of a femme sole."

In an earlier case between the same parties and reported in the Eighth Alabama, the court says, in referring to the tribal laws and customs relating to and controlling marriage and divorce among the Choctaws:

"Whatever may have been the capacity of the husband to abandon his wife and thereby to dissolve the marriage, if both had become residents of Alabama after the tribe had departed from its limits, it is very clear that the same effect must be given to a dissolution of the marriage by the Choctaw law as given to the marriage by the same law. By that law it appears that the husband may at pleasure dissolve the relation. His abandonment is evidence that he has done so. We conceive the same effect must be given to this act as would be given a lawful decree in a civilized community dissolving the marriage. HOWEVER STRANGE IT MAY APPEAR AT THIS DAY THAT A MARRIAGE MAY THUS EASILY BE DISSOLVED, THE CHOCTAWS ARE SCARCELY WORSE THAN THE ROMANS, WHO PERMITTED THE HUSBAND TO DISMISS HIS WIFE FOR THE MOST FRIVOLOUS CAUSES." (Story, Confl. of Laws, 169.)

The supreme court of the State of Missouri in the case of Johnson *v.* Johnson's Administrator (9 Mo. Reports, p. 88) reaffirmed the holding of the Alabama supreme court in the two cases above referred to, and from that day to this not a single decision can be found of any court holding to the contrary.

TREATY DULY RATIFIED.

On the 24th day of February, 1831, the treaty was duly ratified by the Senate of the United States, approved by President Jackson, and proclaimed as a law.

UNDERSTANDING OF CONTRACTING PARTIES WAS THAT CONVEYANCE SHOULD BE IN FEE SIMPLE.

The Government of the United States, by the second article of the treaty of 1830, stipulated and agreed with the Choctaws that the grant should be made in fee simple, and such was unquestionably the understanding of the Indians and the representatives of the Government, both before and after the negotiation and ratification of the treaty. In the case of The United States *v.* The Choctaw Nation (179 U. S., pp. 531–535; 45 L. ed., pp. 306, 307), Mr. Justice Harlan, delivering the opinion of the court, ably and exhaustively reviews the various decisions of that court relating to the construction of treaties with Indians, and then quotes from Mr. Justice Story in the Amiable Isabella (6 Wheat., 1, 71, 72; 5 L. ed., 191, 208), which he says is applicable to the construction of treaties with Indians, as follows:

"We are to FIND OUT THE INTENTION of the parties by just rules of interpretation applied to the subject-matter; and having found THAT our duty is to follow IT as far as IT goes and to stop where THAT stops, whatever may be the imperfections or difficulties which IT leaves behind. * * * In the next place, this court is bound to GIVE EFFECT TO THE STIPULATIONS OF THE TREATY IN THE MANNER AND TO THE EXTENT which the parties have DECLARED, and not otherwise."

In this case (United States *v.* Choctaw Nation, 179 U. S., pp. 511–517) the court recites at length the correspondence between the Indians and the Government officers before the signing of the treaty, and then says:

"We have made this extended reference to the correspondence between the Indians and the officers of the United States for the purpose, not only of showing that the Choctaws had no claim, legal or equitable, to territory west of the one hundredth degree of west longitude, but indicating the situation and relation of the parties when the treaty of 1855, to be presently referred to, was concluded."

In the case of the New York Indians *v.* United States (170 U. S., p. 34; 42 L. ed., p. 939) the court refers to the correspondence between the Indians and the Government officers after the signing of the treaty, and then says:

"While none of these documents are of great importance in themselves, they serve to indicate very clearly that in the mind of the Executive and departmental officers the rights of the Indians, under the treaty of Buffalo Creek, were continuously recognized as just claims against the Government."

We have hereinbefore called attention to the proposed treaty prepared by the Choctaws and transmitted to President Jackson, and

by him redrafted and sent to the Senate, which formed the basis of the treaty of 1830, under which this grant was made. The Choctaw draft, article 1, provided:

"And immediately on the ratification of this treaty, a patent shall be issued by the President of the United States, GUARANTEEING AND THANSFERRING to the Choctaw Nation of Red People A FULL AND PERFECT TITLE IN FEE SIMPLE to all the lands within the above-described limits, and FOREVER WARRANTING AND DEFENDING the peaceable possession of the same to the Choctaw Nation, their descendants, and citizens."

And by article 30 it was declared:

"This is the only proposition that the Choctaw Nation will ever make to the United States, and proposes the only terms on which the said Nation will emigrate to the West."

The above terms proposed by the Choctaws leave no room to doubt that they expected, and would accept nothing short of a patent issued by the President of the United States guaranteeing and transferring to the Choctaws a full and perfect title in fee simple, and forever warranting and defending the same.

It is equally evident from President Jackson's redraft of the treaty that he intended to convey a perfect title in fee simple. His draft of the proposed treaty as transmitted to the Senate provided:

"ARTICLE 1. * * * And so soon after the ratification of this treaty as Congress shall authorize it a patent shall be issued by the President of the United States GRANTING AND TRANSFERRING to the said Choctaw Nation of Red People A FULL AND PERFECT TITLE IN FEE SIMPLE to all the lands within the before-described limits and FOREVER WARRANTING AND DEFENDING THE PEACEABLE POSSESSION OF THE SAME to the Choctaw Nation and their descendants."

The correspondence between the Government officers and the Choctaws and Chickasaws immediately preceding the signing of the treaty in 1830 and the interlineations made therein before signing (hereinbefore set out) also clearly show an intention on the part of the Government to convey the lands in fee simple and an understanding on the part of the Choctaws that they were to receive nothing short of a fee-simple title.

Let us now consider the correspondence following the ratification of the treaty of 1830 for the purpose of ascertaining the understanding of the Government officers as to the nature of the title conveyed to the Indians. On December 30, 1831, Secretary of War John H. Eaton and Gen. John Coffee, who negotiated the Treaty of 1830 with the Choctaws, addressed the Chickasaws at Franklin, Tenn., in part as follows (Senate Doc. No. 512, vol. 4, pp. 15, 16, 23d Cong., 1st sess.):

"BROTHERS: The country which your Great Father proffered you is no longer his. It has been ceded to other tribes, and now the only alternative before you is to obtain by PURCHASE a portion of the CHOCTAW LANDS. They are your neighbors, friends, and brothers, and have it to spare. A hope is entertained that, mindful of their ancient friendships and being possessed of a larger country than they can ever want, they will not fail to accommodate you, if your wishes be made known to them in an earnest, frank, and proper manner. Now is the time to act. Decline, and put it off to some future time, and it may be too late. The wants and condition of the Chickasaws being frankly and fully made known, their Choctaw brothers will not turn away and leave them to suffer. Their Great Father will not think so unkindly of them as to suppose they will refuse, when he is willing to make them a reasonable and fair compensation for their liberality."

At the council house, Chickasaw Nation, January 15, 1832, the Chickasaws, in reply to Generals Coffee and Eaton, said:

"We are aware that the COUNTRY OFFERED TO US AT THAT TIME IS NO LONGER THE PROPERTY OF THE UNITED STATES. We are sorry for it. Having from our first acquaintance confided in the talks delivered by the United States authorities, we are disposed to acknowledge that the only hope that now remains for us to avoid a state of things the realities of which we would deeply deplore is to endeavor to ACQUIRE A PORTION OF THE CHOCTAW LANDS."

On December 6 Secretary of War John H. Eaton and Gen. John Coffee addressed the Chickasaws at Oaka Knoxabee Creek, in part, as follows (Senate Doc. No. 512, vol. 4, p. 17, 23d Cong., 1st sess.):

"One hope remains—the CHOCTAWS near whom you have so long resided, POSSESS A COUNTRY to the west infinitely greater in extent than is required for their use and wants. * * *

"Your Great Father, anxious to advance the interest and happiness of his red children of the Chickasaws will cheerfully assist them in RENDERING A FAIR EQUIVALENT TO THEIR CHOCTAW BROTHERS FOR WHATEVER PRIVILEGE OR SETTLEMENT THEY MAY BE DISPOSED TO GRANT. * * *"

By the laws of the United States no contract for the purchase of land can be entered into by Indians except in the presence of Commissioners who represent the Government.

In an address to the Choctaws and Chickasaws Secretary of War John H. Eaton and Gen. John Coffee, at Oaka Knoxabee Creek, December 7, 1831, said (Senate Doc. No. 512, vol. 4, pp. 18, 19, 20, 21):

"The COUNTRY WEST OF THE MISSISSIPPI, WHICH IS SECURED BY THE TREATY OF DANCING RABBIT, is sufficient for an infinitely greater population than the Choctaws have. The population of each nation being united, more land will be possessed than is sufficient for the uses and purposes of both. * * *"

"We speak to you by instructions from your Great Father. * * *

"BROTHERS: We come to visit you as friends. We earnestly desire your prosperity and seek no other object. WE HAVE NOT HERETOFORE DECEIVED YOU NOR WILL WE NOW. A new era is opening upon your people. Our desire is, by disclosing obvious truths, to awaken you to a necessity of your essential interests. Concede to your Chickasaw brothers a portion of your country. By doing so both will be benefited. Assent, and the condition of each will be improved; but refuse and your older brothers will be constrained to languish under that state of things—submission to the white man's laws—which you have already confessed your people could not bear, and which, consequently, has occasioned their removal from the land of their fathers.

"But the territory OWNED by the Choctaws is fully equal to that which they and the Chickasaws together occupy on this side of the Mississippi and superior in climate and fertility of soil. * * *

"Or, if this be not acceptable to both nations, and a defined plan of government can not be agreed upon, then for consent to be given, and for an agreement to be made, that the Chickasaws shall occupy, and independently hold, such portion of the CHOCTAW COUNTRY AS MAY BE APPROVED BY THEIR BROTHERS, THE CHOCTAWS. For this liberality your Great Father will consent to PAY what may be considered reasonable and proper. Whatever assistance we can render, in forming with you a plan of government and union for the advancement and prosperity of both nations, will (if requested) be cheerfully given. In the meantime, until a plan be agreed upon, let your brothers, the Chicasaws, participate in YOUR LANDS. * * *"

Here we find the Secretary of War, charged by law with the administration of Indian affairs, speaking for the President, and being the person who negotiated the treaty of 1830 for the Government, assuring the Choctaws and Chickasaws that he has not theretofore deceived them, and will not, and informing the Chickasaws that the "COUNTRY WHICH YOUR GREAT FATHER PROFFERED YOU IS NO LONGER HIS," and that they must treat with the Choctaws in order to secure a portion of the lands which the "CHOCTAWS OWN."

There is no doubt that the Choctaws, by the third article of the treaty of 1830, made an absolute, unconditional, and immediate surrender of all their title to the lands east of the Mississippi to the Government of the United States, and it is unreasonable to assume that they expected or intended that the conveyance to them of the lands west of the Mississippi should be anything less than a fee simple. The language used in the treaty clearly imports that an immediate and irrevocable grant shall be made to the Choctaws. In the case of New York Indians *v.* United States (170 U. S., p. 19, 42 L. ed., pp. 933–934) the court says:

"There can be no doubt that the cession by the Indians of their interest in the Wisconsin lands, in the first article of the treaty, was an absolute, unconditional, and immediate grant, and it is improbable that the Indians would have consented, or that the United States would desire, that they should accept from the Government a mere promise to set apart for them in the future the tract in Kansas. If we are to adopt such a construction it would follow that the title of the Indians, not only to the tract in Kansas, but to the lands in Wisconsin, was made dependent upon their removal to their new home. While it might be reasonably contended that their failure to remove should result in a cancellation of the treaty and a restoration to them of their rights in the Wisconsin lands, that construction is precluded by the language of the first article, which contains a present and irrevocable grant of the Wisconsin lands and puts it beyond their power to revoke the bargain." * * *

TREATY PROVIDED FOR SPECIAL GRANT AND SPECIAL INDIAN POLICY FOR CHOCTAWS.

That article two of the treaty of 1830 provided for a special grant to the Choctaws of the lands west of the Mississippi not only appears from the express language used therein, but is so declared by the Supreme Court of the United States in the case of the United States *v.* Choctaw Nation (179 U. S., p. 508, 45 L. ed., p. 297). Mr. Justice Harlan, delivering the unanimous opinion of the court, said:

"It can not be doubted that the purpose of article 2 of the treaty of 1830 was to provide for a SPECIAL GRANT to the Choctaws of the lands intended to be ceded to them by article 2 of the treaty of 1820 and no others."

GRANT MADE NOT IN EXACT CONFORMITY WITH TREATY.

On the 24th day of February, 1831, the treaty was duly ratified by the Senate of the United States and approved by President Jackson. On the 26th day of May, 1831, President Jackson executed under his hand and seal "three grants on parchment" for the lands which it was provided by article 2 of the treaty should be conveyed to the Choctaws, as appears from the following communication (Senate Doc. 512, vol. 2, p. 304, 23d Cong., 1st sess.):

DEPARTMENT OF WAR,
OFFICE INDIAN AFFAIRS,
June 9, 1831.

SIR: I transmit herewith, by direction of the Secretary of War, three grants on parchment from the President of the United States to the Choctaw Nation, for the lands assigned to said nation west of the Mississippi by the late treaty, one for the principal chief of each district of the nation. You will deliver them, accordingly, when you meet the chiefs to pay the annuity, or at any other convenient opportunity.

I am, etc., SAMUEL S. HAMILTON.

Col. WILLIAM WARD, *Choctaw Agent.*

The grant made by President Jackson to the Choctaws was as follows:

"Whereas on the 27th day of September last a treaty was concluded at Dancing Rabbit Creek between Commissioners duly appointed on the part of the United States and the Choctaw Nation of Indians; and the same, having been ratified by the Senate, was officially promulgated on the 24th of February, 1831, which treaty, in the second article, stipulates 'that the United States, under a grant specially to be made by the President, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits; thence due south to Red River and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning.'

"Now, in pursuance of said treaty, and of the powers and authority vested in me by an act of Congress approved the 28th day of May, 1830, entitled 'An act to provide for an exchange of lands with the Indians residing in any of the States or Territories and for their removal west of the Mississippi River,' said country as is described in the second article of said treaty, is hereby granted and assigned to said Choctaw Nation of Indians to the extent and after the condition of tenure therein declared, and liable to no transfer or alienation except to the United States.

"In testimony hereof, and that the same may be carried into effect, I have signed this grant with my own hand, and cause it to be certified under the seal of the War Department, this 26th day of May, 1831, and of the State Department.

ANDREW JACKSON.

By the President:
E. LIVINGSTON, *Secretary of State.*
By the President of the United States:
JOHN H. EATON, *Secretary of War.*

We are advised by the officers of the State, War, and Interior Departments that this grant is not of record in their respective Departments, and the copy hereinabove set out is taken from Senate Document 512, volume 2, pages 304 and 305, Twenty-third Congress, first session. Neither have we, after repeated inquiries at the Departments of the Government and diligent search of all Government documents and papers bearing on this subject, been able to secure any reference to this grant other than in the one instance in which it appears in the Senate document.

This grant was not in conformity with the established rules and

forms of conveyancing, nor strictly in conformity with the terms and provisions of the treaty, and after diligent search we have been unable to find any correspondence or explanation of any kind. We assume that the Government officers considered it defective, for in 1842 President Tyler caused to be issued under his hand and seal a patent reading as follows:

"PATENT.

"The United States of America, to all to whom these presents shall come, greeting:

"Whereas, by the second article of the treaty began and held at Dancing Rabbit Creek, on the fifteenth day of September, in the year of our Lord one thousand eight hundred and thirty (as ratified by the Senate of the United States, on the 24th of February, 1831), by the Commissioners on the part of the United States and the Mingoes, chiefs, captains, and warriors of the Choctaw Nation, on the part of said nation, it is provided that 'the United States under a grant SPECIALLY to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation' a tract of country west of the Mississippi River, IN FEE SIMPLE TO THEM AND THEIR DESCENDANTS, to inure to them while they shall exist as a nation and live on it: Beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825.

"Now, KNOW YE, that the United States of America in consideration of the premises, and in execution of the agreement and stipulation in the aforesaid treaty, have given and granted, and by these presents do give and grant, unto the said Choctaw Nation, the aforesaid 'tract of country west of the Mississippi,' to have and to hold the same, with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, AS INTENDED, 'TO BE CONVEYED' by the aforesaid article, IN FEE SIMPLE TO THEM AND THEIR DESCENDANTS TO INURE TO THEM while they shall exist as a nation and live on it, liable to no transfer or alienation except to the United States or with their consent." (Recorded, vol. 1, p. 43, General Land Office.)

The Supreme Court of the United States recognizes this latter patent as the instrument by which the grant was made in the case of United States *v.* Choctaw Nation (179 U. S., p. 522, 45 L. ed., p. 302) wherein the court says:

"The treaty closed this dispute forever; if it had not been closed by previous treaties and by the SPECIAL GRANT OF 1842 made pursuant to ARTICLE 2 of the TREATY OF 1830, and which as we have said estopped the Indians from claiming any lands not within the limits of the United States."

FEE-SIMPLE TITLE CONVEYED.

The inhibition which the Government officers attempted to place upon the transfer or alienation of the lands by adding at the end of the habendum clause of the patent the words "liable to no transfer or alienation except to the United States, or with their consent," was not binding upon the Choctaws. No administrative officer possessed the constitutional power to include in the patent any restrictions upon the grantee not authorized by the treaty. This proposition is elementary and needs no elaboration by argument or citation of authority for its support.

Nor did the words appearing in both the treaty and the patent, "TO INURE TO THEM WHILE THEY SHALL EXIST AS A NATION AND LIVE ON IT," reduce the estate conveyed to less than a fee, as has been contended by those who have opposed the rights of these people. The grant, as we will presently conclusively show, was to the Choctaw Nation, in TRUST, for the EXCLUSIVE USE AND BENEFIT OF THOSE PERSONS COMPRISING THE CHOCTAW COMMUNITY ON THE DAY THE TREATY WAS RATIFIED and was to INURE to THEM and THEIR DESCENDANTS. Let us analyze the words of the treaty and the grant and ascertain therefrom their true meaning and intent. The grant was: "To the Choctaw Nation * * * in fee simple to them and their descendants," which vested in the Choctaw Nation, as trustee, the "full and perfect" legal "title in fee simple" and in "them and their descendants" the "full and perfect" equitable "title," and for the purpose of defining the LIFE of the TRUST these words of LIMITATION were added:

"To inure to them while they shall exist as a nation and live on it."

When the Choctaw Nation—the TRUSTEE—ceased to exist, and the PERSONS for whose BENEFIT the TRUST was CREATED ceased to live upon the land as a nation, the fee could no longer INURE but would pass to, and vest in, the then living beneficiaries under the grant, thus completely merging the legal title formerly held by the TRUSTEE with the equitable title held by them, and the members of the former cestui que trust would then be seized in fee of their property.

But this condition has never occurred. The TRUSTEE—the Choctaw Nation—has continued in being and the grant has continued to INURE.

As it has been contended with such fervor that the grant was not a FEE SIMPLE, we shall trespass upon your patience with a more extended argument on this question and the citation of authorities which seem to us conclusive.

In the case of the New York Indians *v.* United States (170 U. S., p. 20, 42 L. ed., p. 934) the court in determining the nature of the title acquired by the Indians under a treaty which provided for a grant "IN FEE SIMPLE" and in the habendum clause of the treaty, *Provided always*, THAT SUCH LANDS SHALL REVERT TO THE UNITED STATES IF THE INDIANS BECOME EXTINCT OR ABANDON THE SAME," said:

"In this case if the habendum clause were alone considered, there could be no doubt whatever that the Indians would take a present title to a FEE SIMPLE. There is certainly no conflict between the granting and habendum clauses. Admitting that the former, if standing alone, would engender a doubt as to when the grant should take effect, the habendum clause removes that doubt and imports a present surrender of a defined tract."

Throughout this decision the court refers to the title of the Indians under this grant as a FEE SIMPLE, and cites previous decisions of that court in which the words "hereby cede and relinquish," or "agree to set apart," or "shall be allotted for, and given to," or "shall have their right," and other similar expressions in treaties and grants have been held by that court as conveying a fee-simple title.

It has been contended by attorneys for the nations and the Government of the United States that the treaty of 1830, under which petitioners claim title, must be construed in the light of the act of Congress approved May 28, 1830, in strict conformity with the general governmental Indian policy as therein declared, and not otherwise. This contention we submit is little short of an absurdity.

While the treaty in 1830 with the Choctaws, under which petitioners claim title, and the act of Congress approved May 28, 1830, sought to accomplish a common object, viz, the removal of the Indians, very different instrumentalities were employed, and a court is not to be governed in the construction of the treaty of 1830 by the provisions of the act of Congress, particularly where the provisions of the treaty differ widely, as they do, from the provisions of the act of Congress.

Mr. Justice Clifford in delivering the opinion of the Supreme Court in the case of Holden *v.* Joy (84 U. S., 21 L. ed., pp. 532–533), in deciding a controversy arising from a grant of land to the Cherokees, the patent to which was issued under the act approved May 28, 1830, but which patent was not in conformity with the provisions of the treaty providing for the grant of land, says:

"Much reason exists to suppose that Congress, in framing those provisions, had in view the stipulations of the treaty concluded two years earlier, and it is equally probable that the President and Senate in negotiating and concluding the two treaties of later date were largely governed by the several provisions in that act of Congress, BUT THEY WERE NOT CONTROLLED BY THESE ENACTMENTS, as is evident from the fact that the later of the two contains many stipulations differing widely from the provisions of that act, as, for example, the United States, in the supplemental article enlarging the quantity of land set apart for the accommodation of the nation, expressly covenant and agree TO CONVEY THE ADDITIONAL TRACT TO THE SAID INDIANS AND THEIR DESCENDANTS BY PATENT, IN FEE-SIMPLE TITLE, and the article does not contain any such provision as that contained in the third section of the act of Congress that the land shall revert to the United States if the Indians become extinct or abandon the territory. (4 Stat. L., 412; 7 Stat. L., 480.)

"ATTEMPT IS MADE IN ARGUMENT TO SHOW THAT THE LAST-NAMED TREATY WAS NEGOTIATED BY FORCE OF THE ACT OF CONGRESS TO PROVIDE FOR AN EXCHANGE OF LANDS WITH THE INDIANS, BUT IT IS CLEAR THAT THE PROPOSITION CAN NOT BE SUSTAINED, AS THE TREATY DIFFERS WIDELY IN MANY RESPECTS FROM THE PROVISIONS OF THAT ACT OF CONGRESS. Doubtless the intent and purpose were the same—to quiet the disturbances and to induce the Indians remaining in the States and Territories to emigrate and settle in the district of country set apart for them without the limits of the several States and organized Territories—but the treaty, though concluded to promote the same object as the act of Congress, adopts very different instrumentalities."

FEE STIPULATED FOR IN TREATY OF 1830 CAN NOT BE LIMITED OR RESTRICTED BY PROVISIONS OF ACT OF MAY 28, 1830.

By the treaty of February 14, 1833, the United States agreed to convey to the Cherokee Nation, under the provisions of the act of Congress approved May 28, 1830, 7,000,000 acres of land. In 1835 (7 Stats., 478) the Government entered into another treaty with the Cherokees, whereby it renewed its pledge to convey the said 7,000,000 acres of land to the Cherokee Nation, and also agreed to convey to the said Indians and their descendants by patent in fee simple 800,000 acres of land which was known as the "neutral lands" in Kansas.

Article 3 of the treaty provided (vol. 2 Indian Treaties, p. 441):

"The United States also agree that the lands above ceded by the treaty of February 14, 1833, including the outlet and those ceded by this treaty, shall all be included in one patent executed to the Cherokee Nation of Indians by the President of the United States ACCORDING TO THE PROVISIONS OF THE ACT OF MAY 28, 1830."

The patent issued to the Cherokee Nation recited that the conveyance of both tracts was made pursuant to the act of May 28, 1830. In litigation that arose involving title to the neutral strip, which the treaty provided should be conveyed to the said Indians and their descendants by patent in fee simple, it was contended by counsel that as the Cherokees had not resided on these lands under the provision in the patent inserted in conformity with the act approved May 28, 1830: *"Provided always*, That such land shall revert to the United States if the Indians become extinct or abandon same" the lands had reverted to the United States.

In passing upon this question, the Supreme Court of the United States, speaking through Mr. Justice Clifford, said (84 U. S., 21 L. ed., 536):

"Two objections are made to the title of the appellee as affected by that treaty, in addition to those urged to show that the prior treaty between the same parties was inoperative and invalid. It is contended by the appellant that the Cherokee possessory right to the neutral lands was extinguished by the seventeenth article of the treaty, which undoubtedly is correct, but the conclusion which he attempts to deduce from that fact can not be sustained—that the Cherokee Nation abandoned the lands within the meaning of the last condition inserted in the patent by which they acquired the same from the United States.

"Strong doubts are entertained whether that condition in the patent is valid, as it was not authorized by the treaty under which it was issued. BY THE TREATY THE UNITED STATES COVENANTED AND AGREED TO CONVEY THE LANDS IN FEE-SIMPLE TITLE, AND IT MAY WELL BE HELD THAT IF THAT CONDITION REDUCES THE ESTATE CONVEYED TO LESS THAN A FEE, IT IS VOID."

The conveyance being in fee simple, the Government could not attach a condition subsequent that would impair the right of the grantee to sell, lease, incumber, or otherwise dispose of the estate granted. In the early history of this country this question was settled, and the decisions of the early courts have never been called in question until the last few years, when the idea seems to have become almost universal, except with the judiciary, that Congress and the Executive can do almost anything with reference to private rights.

In the case of De Payster *v.* Michael (Am. Dec., vol. 57, p. 474), Chief Justice Ruggles, delivering the opinion of the court of appeals of New York, said:

"But it is a well-established principle that where an estate in fee simple is granted, a condition that the grantee shall not alien the land is void. Littleton says: 'Also, if a feoffment be made on this condition that the feoffee shall not alien the land to any, this condition is void: because when a man is enfeoffed of lands or tenants, he hath the power to alien them to any person by law. For if such a condition should be good, then the condition should oust him of all power which the law gives him which should be against reason, and therefore such a condition is void.' (Section 360.)

"Coke, in his commentary on this section, adds: 'And the like law is of a devise in fee upon a condition that the devisee shall not alien,

the condition is void; and so it is of a grant, release, confirmation, or any other conveyance whereby a fee simple doth pass.' (Co. Lit., 223a.) The language of Mr. Cruise is: 'A condition annexed to the creation of an estate in fee simple, that the tenant shall not alien, is void and repugnant to the nature of the estate given; for a power of alienation is an incident inseparably annexed to an estate in fee simple.' (Cru. tit., 13, c. 1, sec. 22.) 'The right of alienation passes by the grant of the fee as perfectly as if it were given by the express terms of the grant. Without such right the estate granted would be neither a fee simple nor any other estate known to the law. Lands granted in fee on condition that the grantee shall not enjoy the lands, or shall not take the profits of the lands, or on condition that the heir of the grantee shall not inherit the lands, or on condition that the grantee shall not do waste, or on condition that his wife shall not be endowed—in all these and the like cases the condition is void as repugnant to the estate.' (Shep. Touch., 131.) 'A condition annexed to an estate given is a divided clause from the grant, and therefore can not frustrate the grant precedent, neither in anything expressed nor in anything implied which is of its nature incident and inseparable from the thing granted.' (Stukeley *v.* Butler, Hob., 170.)

"The reason why such a condition can not be made good by agreement or consent of parties is, that a fee-simple estate and a restraint upon its alienation can not, in their nature, coexist. The ownership of the fee can not exist in one person while the ownership of the right of alienation of its fruits exists in a different person. This is a principle older than the common law of England. Grotius, b. 1, c. 6, sec. 1, says: 'Since the establishment of property, men who are masters of their own goods have by the law of nature the power of disposing of or of transferring all or any part of their effects to other persons; for this is the very nature of property; I mean of full and complete property;' and therefore Aristotle says: 'It is the definition of property to have in one's self the power of alienation.'

"That this principle was at an early day engrafted upon the common law and applied to estates in fee, we have the authority of Littleton, as above cited, and of Coke, 2 Inst., 65. By the common law, it is against the nature and purity of a fee simple 'for the tenants to be restrained from alienation.' But the rule of common law on this point is not founded exclusively on principles of natural law. It rests also on grounds of great public utility and convenience, in facilitating the exchange of property, in simplifying its ownership, and in freeing it from embarrassments, which are injurious, not only to its possessor, but to the public at large."

RESIDENCE ON LAND UNNECESSARY.

That it was not the intention of the contracting parties to make the RIGHT of a person to share in the lands conveyed to the Choctaw Nation in trust DEPENDENT UPON RESIDENCE ON THE LAND conclusively appears from article 14 of the treaty of 1830, under the second article of which treaty the grant was made. Article 14 of the treaty provides:

"EACH CHOCTAW HEAD OF A FAMILY BEING DESIROUS TO REMAIN AND BECOME A CITIZEN OF THE STATES SHALL BE PERMITTED TO DO SO by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of 640 acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over 10 years of age, and a quarter section to such child as may be under 10 years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the States for five years after the ratification of this treaty, in that case a grant in fee simple shall issue. Said reservation shall include the present improvement of the head of the family or a portion of it. PERSONS WHO CLAIM UNDER THIS ARTICLE SHALL NOT LOSE THE PRIVILEGE OF A CHOCTAW CITIZEN, BUT IF THEY EVER REMOVE ARE NOT TO BE ENTITLED TO ANY PORTION OF THE CHOCTAW ANNUITY."

The Choctaw who remained in Mississippi and Alabama, or who did not remove with the Choctaws to the western lands, FORFEITED ONLY HIS RIGHT TO SHARE IN THE ANNUAL ANNUITIES of twenty thousand dollars, which by article 12 were to continue for the period of twenty years, and other annual payments provided for in other articles of the treaty, which annuities were given in lieu of a definite sum to be paid to the Choctaws by the Government in ADDITION to the western lands ceded the Choctaws by the United States. The ALLOTMENT OF LAND in Mississippi and Alabama was given to EVERY PERSON who desired to remain IN LIEU OF ANY RIGHT TO SHARE IN THESE ANNUITIES. But it was expressly provided in the above article that the PERSON REMAINING SHOULD NOT FORFEIT HIS RIGHT IN THE WESTERN LANDS BY REASON OF HIS FAILURE TO REMOVE. AND THEREFORE RESIDENCE ON THE LAND WAS NOT A CONDITION PRECEDENT, AND THEREFORE NOT NECESSARY TO ENABLE THE PERSON TO SHARE IN THE TRUST PROPERTY.

THE GRANT TO THE CHOCTAWS WAS IN PRÆSENTI.

"THERE BE, AND IS HEREBY GRANTED" are words of absolute donation and import a grant in præsenti. This court has held that they can have no other meaning. * * * They vest a present title. * * * (Leavenworth, etc., R. R. Co. *v.* U. S., 92 U. S., 733; 23 L. ed., 637; St. Joseph, etc., R. Co. *v.* Baldwin, 103 U. S. 427, 26 L. ed., 597; M., K. & T. Ry. Co. *v.* Kansas & Pacific Co., 97 U. S., 24 L. ed., 1097.)

"HAVE GIVEN AND GRANTED, AND BY THESE PRESENTS DO GIVE AND GRANT," the language used in the patent, constituted a GRANT IN PRÆSENTI, and they could have no other meaning.

It is a settled rule of construction that if from all the language of a statute or treaty it is apparent that Congress intended to convey an immediate interest it will be construed as a grant in præsenti. (New York Indians *v.* U. S., 170 U. S., pp. 15, 16; 42 L. ed., p. 932.)

In the case of Wallace *v.* Adams (143 Fed. Rep., 8th circuit, p. 723) Mr. Justice Sanborn, in referring to the cases reviewed and analyzed by the Supreme Court of the United States in its decision in New York Indians *v.* United States, says:

"The opinions in the cases cited are limited to rulings that grant to designated persons or classes of persons are grants in præsenti, and that after they have taken effect the rights to the property have vested so that they may not be lawfully destroyed by legislation without compensation."

In the case at bar the grant was in PRÆSENTI in FEE SIMPLE to the Choctaw Nation, as TRUSTEE for the use and benefit of a designated class of persons, i. e., ALL THOSE PERSONS COMPRISING THE CHOCTAW COMMUNITY AT THE DATE OF THE RATIFICATION OF THE TREATY OF 1830, AND INURED TO THEIR DESCENDANTS.

Let us analyze the language used in the treaty and made the operative words of the grant. The grant was "to the Choctaw Nation * * * in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it."

The personal pronoun "them," referring and relating to all those persons then comprising the Choctaw community of Indians, and the word "descendants," meaning:

"Any person who is descended from another; anyone who proceeds from the body of another, however remotely." (American and English Enc. of Law, p. 641.)

And the word "inure," meaning:

"1. To pass into use.

"2. To take or have effect.

"3. To serve the use or benefit of." (Bouvier and Universal dictionaries.)

The grant, was, therefore, IN PRÆSENTI in FEE SIMPLE to the Choctaw Nation as TRUSTEE for the use and benefit of all THOSE PERSONS THEN COMPRISING THE CHOCTAW COMMUNITY OF INDIANS AND ANY PERSON DESCENDED FROM THEM OR WHO PROCEEDED FROM THE BODY OF THEM, HOWEVER REMOTELY, and no other person.

CHOCTAW NATION HELD LANDS AS TRUSTEE.

The draft of the treaty prepared by the Choctaws and as amended by President Jackson, which formed the basis of the negotiations which resulted in this treaty, the Journal record of the negotiations leading up to the signing thereof, hereinbefore set out, and the language used in the second article of the treaty as ratified, clearly import an intention on the part of both of the contracting parties to CREATE A TRUST and to LIMIT THE TRUST PROPERTY exclusively to the USE and BENEFIT of all THOSE PERSONS THEN COMPRISING THE CHOCTAW COMMUNITY AND THEIR DESCENDANTS.

But even if the language of the treaty admitted of doubtful construction, it must be given the construction which is most favorable to the Indians.

"THE LANGUAGE USED IN TREATIES WITH INDIANS SHOULD NEVER BE CONSTRUED TO THEIR PREJUDICE." (Worcester *v.* Georgia, 6 Pet., 582; 8 L. ed., 508.)

"When a treaty admits of two constructions, one restricting as to the rights that may be claimed under it and the other liberal, the latter is to be preferred." (Shanks *v.* Dupont, 3 Pet., 242.) SUCH IS THE SETTLED RULE OF THIS COURT."

So said Mr. Justice Swayne in delivering the opinion of the court in the case of Hauenstein *v.* Lynham (100 U. S., 47; 25 L. ed., 629) and citing the above referred to decision by Mr. Justice Story.

Certain it is that such was the understanding and intent of the grantor, the Government of the United States, for the language of the patent (prepared by the Government officers, presumably under the direction of that eminent lawyer, Daniel Webster, then Secretary of State) clearly created a trust by conveying the lands in fee simple to the Choctaw Nation for the use and benefit of them and their descendants. The habendum clause of the patent reads:

"To have and to hold the same, with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, AS INTENDED 'TO BE CONVEYED' by the aforesaid article, 'IN FEE SIMPLE TO THEM AND THEIR DESCENDANTS, TO INURE TO THEM while they shall exist as a nation and live on it.'"

In the case of New York Indians *v.* United States (170 U. S., pp. 19–22; 42 L. ed., p. 934) Mr. Justice Brown, speaking for the court, said:

"The object of the habendum clause is said to be 'to set down again the name of the grantee, the estate that is to be made and limited, or the time that the grantee shall have in the thing granted or demised, and TO WHAT USE.' (Sheppard's Touchstone, 75.) It may explain, enlarge, or qualify, but can not contradict or defeat the estate granted by the premises, and where the grant is uncertain or indefinite concerning the estate intended to be vested in the grantee, the habendum performs the office of defining, qualifying, or controlling it." (Jones, Real Prop., 563; Devlin, Deeds, 215.)

The words "AS INTENDED TO BE CONVEYED IN FEE SIMPLE TO THEM AND THEIR DESCENDANTS," and the word "INURE" (meaning "to serve to the use or benefit of") were sufficient to fasten a trust upon the conscience of the trust donee. In the case of Randolph *v.* East Birmingham Lamp Company (Am. St. Rep., vol. 53, p. 67; 104 Ala., 355) Mr. Justice Haralson says:

"IN ALL CASES, as has been held, POWERS OR TRUSTS MUST BE CONSTRUED ACCORDING TO THE INTENTION OF THE PARTIES, TO BE GATHERED FROM THE WHOLE INSTRUMENT (1 Perry on Trusts, sec. 248; Kerr *v.* Verner, 66 Pa. St., 326; Guion *v.* Pickett, 42 Miss., 77). And when a gift in a will is expressed to be for the 'USE AND BENEFIT' of another, or to be at the disposal of the donee, for himself and children,' or 'toward his support and family,' or 'to enable the donee to provide for and maintain' his children, or where the gift is expressed to be made 'to the end' or 'TO THE INTENT' and the donee should apply it to certain purposes, the terms thus employed have been held sufficient to fasten a trust upon the conscience of the trust donee." (Hill on Trustees, *66, *67.)

The Choctaw Nation having been previously repeatedly recognized by the United States Government as fully possessed of authority to take and hold, in its own name and for its own use, real or personal property, and to sell, alienate, or otherwise dispose of same, and pass a valid title thereto, and being specially recognized as possessing such powers by the second and third articles of the treaty of 1830, there can be no question as to its authority to hold the property conveyed as TRUSTEE.

In the case of Commissioners of the Sinking Fund *v.* Walker (Am. Dec., vol. 38, p. 435, 6 Howard, 143) Mr. Chief Justice Sharkey, of the supreme court of Mississippi, says:

"Before the statute of uses, 27 Hen. VIII, c. 10, there was a limitation or restriction as to those who could stand seized to uses, but since the passage of that statute trusts have been adopted to supply the place of uses, and the former inability to stand seized to a use no longer prevails. The general rule now is that all persons capable of confidences and of holding real or personal property may hold as trustees. CORPORATIONS MAY NOW HOLD AS TRUSTEES, although they could not be seized to a use before the statute." (Willis on Trustees, 32–38, Law Lib. * * *)

Continuing, the justice says:

"A trust is said to be 'an obligation upon a person arising out of a confidence reposed in him to apply property faithfully and according to such confidence.' (Willis on Trustees, 2.) To constitute a direct trust there must be a conveyance or transfer to a person capable

of holding it; there must also be an object or fund transferred and a cestui que trust or purpose to which the trust fund is to be applied. NO PARTICULAR WORDS ARE NECESSARY TO CONSTITUTE A TRUST, BUT IF IT BE THE PLAIN INTENTION OF THE PARTIES TO CREATE A TRUST IT WILL BE REGARDED AS SUCH."

In the case of Estate of Smith (Am. State Rep., vol. 27, p. 641; 144 Pa. State, 428) Mr. Justice Clark says:

"THERE IS NO CERTAIN FORM REQUIRED IN THE CREATION OF A TRUST. * * * If the declaration be in writing, it is not essential, as a general rule, THAT IT SHOULD BE IN ANY PARTICULAR FORM. IT MAY BE COUCHED IN ANY LANGUAGE WHICH IS SUFFICIENTLY EXPRESSIVE OF THE INTENTION TO CREATE A TRUST. * * * 'Three things, it has been said, must concur to raise a trust—sufficient words to create it, a definite subject, and a certain or ascertained object; and to these requisites may be added another, viz, that the terms of the trust should be sufficiently declared.' (Bispham's Equity, 65, citing Cruwys *v.* Colman, 9 Ves., 323; Knight *v.* Boughton, 11 Clark & F., 513. * * *.) The intention must be plainly manifest and not derived from loose and equivocal expressions of parties, made at different times and upon different occasions, but any words which indicate with sufficient certainty a purpose to create a trust will be effective in so doing. It is not necessary that the terms 'trust' and 'trustee' should be used. The donor need not say, in so many words, 'I declare myself a trustee,' but he must do something which is equivalent to it and use expressions which have that meaning, for however anxious the court may be to carry out a man's intention, it is not at liberty to construe words otherwise than according to their proper meaning." (Richard *v.* Delbridge, L. R., 18 Eq., 11–13.)

In Hearley *v.* Nicholson (L. R., 19 Eq., 233) Vice-Chancellor Bacon says:

"It is not necessary that the declaration of a trust should be in terms explicit, but what I take the law to require is, that the donor should have evinced by his acts, which admit of no other interpretation, that he himself had ceased to be, and that some other person had become, the beneficial owner of the subject of the gift or transfer, and that such legal right of it, if any, as he retained was held in trust for the donee."

"The one thing necessary," says the same learned judge in Warriner *v.* Rogers (L. R., 16 Eq., 340), "to give validity to a declaration of trust, the indispensable thing, I take to be that the donor or grantor, or whatever he may be called SHOULD HAVE ABSOLUTELY PARTED WITH THAT INTEREST WHICH HAD BEEN HIS UP TO THE TIME OF THE DECLARATION, SHOULD HAVE EFFECTUALLY CHANGED HIS RIGHT IN THAT RESPECT, AND PUT THE PROPERTY OUT OF HIS POWER, AT LEAST IN THE WAY OF INTEREST." The acts or words relied upon must be unequivocal, plainly implying that the person holds the property as trustee. (Martin *v.* Funk, 75 N. Y., 134; 31 Am. Rep., 446. * * *)

The trust created was not only for the USE and BENEFIT of those persons then in esse and members of the Choctaw community in 1830, but was equally for the use and benefit of "DESCENDANTS" YET UNBORN. It is not necessary that the cestui que trust should be in existence in order to create a trust estate. The designation of a trustee capable of taking the legal title to the lands and the designation of a person or CLASS OF PERSONS, for whose benefit the trust was created, was sufficient. In the case of Salem Capital Flour Mills Company *v.* Stayton Water-Ditch and Canal Company (Fed. Rep., vol. 33, p. 153) the court says:

"The natural persons constituting this association, partnership, or company, and calling themselves collectively the 'Wallamet Woolen Manufacturing Company,' were in existence at the date of the deed and capable of taking the beneficiary interest in the grant. THE DESCRIPTION OF THEM AS STOCKHOLDERS IN 'A CERTAIN JOINT STOCK COMPANY WAS A SUFFICIENT DESIGNATION OF THEM. (Friedman *v.* Goodwin McAll., 149.) But if this were otherwise, and THERE WAS NO CESTUI QUE TRUST OR USE IN EXISTENCE AT THE DATE OF THE DEED, nor until the actual incorporation of the woolen company in the December following, THE OBJECTION IS NOT WELL TAKEN. Mr. Washburn (2 Washb. Real Prop., 3d ed., 173), after a careful review of the authorities, says: 'IT MAY BE LAID DOWN AS A GENERAL PROPOSITION THAT IT IS NOT NECESSARY, IN ORDER TO CREATE A TRUST ESTATE, THAT A CESTUI QUE TRUST SHOULD BE NAMED WHO IS IN BEING.' And again (Id., 198) he says: 'A TRUST MAY BE VALID AND EFFECTUAL WHERE A TRUSTEE IS NAMED, ALTHOUGH THE CESTUI QUE TRUST MAY NOT THEN BE IN ESSE, PROVIDED SUCH CESTUI QUE TRUST SUBSEQUENTLY CAME INTO BEING.' (See also on this point Ashhurst *v.* Given, 5 Watts and S., 328; Urket *v.* Coryell, id., 60.)"

In the case of Heermans *v.* Schmaltz (Fed. Rep., vol. 7, pp. 573, 574) the court says:

"As to all the beneficiaries named in the supplementary instrument, there can be no doubt that the trust is sufficiently expressed and defined; but it is claimed that the persons who are to take under the second clause of the instrument, and those who are to receive property under the residuary clause, in case any of the persons named therein die before the decease of the grantor, should have been designated by name, and this omission leaves the trust so far unexpressed and undefined as to invalidate the instrument as a conveyance in trust. I am unable to concur in that view. Most of the ultimate recipients of the property named and the proportions they are to receive are stated.

"The trusts are all clearly defined. In the two instances in which it is provided that distribution shall be made among the children of certain persons there is designation of A CLASS OF BENEFICIARIES. The grantor in such a case could not know when the trust is created, who of the class whom he desired to share in his property might be living at his death, or the names of such persons, or whether there would be children of some other beneficiary named surviving him; and I do not think it is the meaning or intention of the statute that the failure to name in every instance the person whom he might desire in certain contingencies to ultimately share in his estate—THE CLASS IN WHICH SUCH PERSON WOULD BELONG SPECIFICALLY DESIGNATED—should be held to defeat the conveyance as a valid trust instrument, on the ground that it does not fully express and clearly define the trust; and on the whole, I am of the opinion that by the instruments in question an active trust, valid under the statute, was created, and that the plaintiff was made the trustee of an express trust, clothed with the legal title to the premises in controversy."

PROPERTY IN CONTROVERSY REPEATEDLY DECLARED BY CONGRESS, ADMINISTRATIVE OFFICERS, AND THE COURTS TO BE "TRUST PROPERTY."

Not only have the words "AS INTENDED TO BE CONVEYED" and the word "INURE" (meaning to serve to the use or benefit of), as used in both the treaty and the grant ALWAYS BEEN HELD by the courts AS FASTENING A TRUST UPON THE CONSCIENCE OF THE TRUST DONEE—the Choctaw Nation—but the property in controversy has been repeatedly declared to be TRUST property in the reports of Congress, in the reports of administrative officers, and in the decisions of the highest court of this land.

Chief Justice Fuller, in the statement of fact in the case of Stephens *v.* Cherokee Nation (174 U. S. 43 L. ed., p. 1043), refers to and quotes from a report of a Senate committee, composed of Senators TELLER, of Colorado; Platt, of Connecticut, and Roach, of South Dakota, which visited the Choctaw and Chickasaw nations, under Senate resolution adopted March 29, 1894, which report was submitted to the Senate May 7, 1894, and is set out in full in Senate Report No. 377, Fifty-third Congress, second session, and is in part as follows:

"As we have said, THE TITLE TO THESE LANDS IS HELD BY THE TRIBE IN TRUST FOR THE PEOPLE. We have shown that this TRUST is not being properly executed, nor will it be left to the Indians, and the question arises: What is the duty of the Government of the United States with reference to this TRUST? While we have recognized these tribes as dependent nations, the Government has likewise recognized its guardianship over the Indians and its obligations to protect them in their PROPERTY and personal rights.

* * * * * * *

"Is it possible because the Government has lodged the TITLE IN THE TRIBE IN TRUST that it is without power to compel the execution of the TRUST in accordance with the plain provisions of the treaty concerning such trust? Whatever power Congress possessed over the Indians as semidependent nations, or as persons within its jurisdiction, it still possesses, notwithstanding the several treaties may have stipulated that the Government would not exercise such power, and therefore Congress may deal with this question as if there had been no legislation save that which provided for the execution of the patent to the tribes.

"If the determination of the question whether the TRUST is or is not being properly executed is ONE FOR THE COURTS and not for the legislative department of the Government, then Congress can provide by law how such questions shall be determined and how such TRUST shall be administered, if it is determined that it is not now being properly administered.

"It is apparent to all who are conversant with the present condition in the Indian Territory that their system of government can not continue. It is not only non-American, but it is radically wrong, and a change is imperatively demanded in the interest of the Indian and whites alike, and such change can not be much longer delayed. The situation grows worse and will continue to grow worse. There can be no modification of the system. It can not be reformed. It must be abandoned and a better one substituted. That it will be difficult to do your committee freely admit, but because it is a difficult task is no reason why Congress should not at the earliest possible moment address itself to this question."

Chief Justice Fuller then quotes from a report made by the Dawes Commission on November 18, 1905, which concludes as follows:

"The Commission is compelled by the evidence forced upon them during their examination into the administration of the so-called governments in this Territory to report that these governments in all their branches are wholly corrupt, irresponsible, and unworthy to be longer trusted with the care and control of the MONEY AND OTHER PROPERTY OF INDIAN CITIZENS, much less their lives, which they scarcely pretend to protect."

Such was the condition Congress sought to remedy by its legislative enactments, and such condition would have been remedied and claimants given their rightful, equal share in the common trust property in controversy had the administrative officers conformed to the plain provisions of the law under which they were proceeding. It is because of the failure of the administrative officers to divide the property in conformity with the plain mandate of the statute that claimants have been denied their proper rights.

BENEFICIARIES UNDER TRUST.

The trust thus created was not for the exclusive benefit of full bloods or persons of mixed Indian and white blood, but was for the exclusive benefit of all persons who were members of the Choctaw community of Indians at the date of the ratification of the treaty and their descendants. If it had been the intention of the contracting parties to limit the grant exclusively to full bloods or to persons of mixed Indian and white blood, apt words to that end would have been used. In the case of Sloan *v.* United States (95 Fed. Rep., 197) the question presented was whether Indians of mixed blood were to be considered "Indians" under a statute directing the allotment of lands to "Indians" of the Omaha tribe. In passing upon this question Mr. Justice Shiras said:

"It confers the right to an allotment upon the Indians of the Omaha tribe. It makes no discrimination with respect to the mixed bloods. It must have been well known to Congress, as it unquestionably was to the Omaha tribe, that there was residing at that time upon this reservation, as members of the tribe, many persons of mixed blood, and IF IT WAS THE PURPOSE OF THE PARTIES TO EXCLUDE FROM THE BENEFIT OF THE ACT ALL PERSONS WHO WERE NOT INDIANS OF PURE BLOOD, APT WORDS TO THAT END WOULD HAVE BEEN USED."

The condition existing at the date of the ratification of the treaty must continue to the time of the distribution of the property. In the case of the New York Indians *v.* United States, the court in determining who were entitled to share in funds derived from the sale of lands conveyed in fee simple by a grant in præsenti to the Eight Nations of New York Indians, said (40 Court of Claims, pp. 556–557):

"Consequently, the court must adopt a rule of descent or participation which would embrace all persons whom it was the policy of the United States to remove, and this rule being ex necessitate rei, once established must continue. A court can not have one rule for one period of time, and another for another period of time. The white wife and her children born between 1838 and 1860 were as much Indians within the intent of the treaty as any full-blood Indian in the Six Nations, and what was the rule during that period of time must continue to be the rule up to the time of the judgment or the satisfaction of it; that is to say, the children of white mothers and Indian fathers affiliated with the tribe must be reckoned as Indians. The court must look upon the community and its members as such, and can not turn aside into the genealogy of individuals or be turned aside by the peculiarities of Indian laws and customs. THIS IS NOT A QUESTION OF INDIAN CITIZENSHIP OR TRIBAL CUSTOM, OR COMMUNAL OWNERSHIP IN INDIAN PROPERTY, BUT SIMPLY

A QUESTION OF A CONTRACT, AND OF THE INTENT OF THOSE WHO ENTERED INTO IT."

What was the condition existing at the date of the ratification of the treaty? Was the Choctaw community composed exclusively of full-blood Indians or were the members of the community then, as now, possessed of an admixture of the white and black races?

These questions are removed from the domain of controversy by reference to volume 7 of the American State Papers (public lands). That volume contains a list of those members of the Choctaw community of Indians who selected reserves of land in Mississippi under the treaty of 1830 and was compiled in September, 1831. On page 77 appears the names of persons of mixed Indian and negro blood under the heading, "NAMES OF INDIANS OWNING FARMS." In this list are the names of Sally Tom, with the notation "a free woman;" Joshua O'Rare, with the notation "a mulatto; married Sally Tom's daughter and lives with Sally Tom;" William Lightfoot, "a mulatto, half Indian and half negro;" Jim Tom, "half-breed negro; has an Indian wife;" James Blue, "a negro man; had an Indian wife; lives below the factory." Many other references are made therein to persons of mixed Indian blood. Indeed, in the year 1831, when this list was compiled by the Indian chiefs and approved by Government officers, a large percentage of the persons comprising the Choctaw community of Indians were either of mixed Indian and white or Indian and negro blood, and in many instances, as appears from the schedule, recognized members of the Choctaw community were not possessed of any Indian blood, being wholly of negro or white blood. The one and only essential requisite to full membership in the community of those affiliated with the Choctaw tribe was that he or she be a free person. Thus to-day the only essential requisite to participate in the tribal property of the Choctaws is descent from a person who was a member of the Choctaw community in 1830. The question of slavery having been eliminated, it is no longer a question for consideration.

The word "descendants" was advisedly used in the treaty, for at the date of its ratification the Choctaw people were living in a state of nature. The marital ties existing among them were not regarded with the same solemnity that they are in civilized communities to-day—illicit intercourse, as we now understand it, being a common practice—men and women marrying and unmarrying at pleasure under the crude customs of the Choctaws. The mere living together of a man and a woman constituted a valid marriage, and the abandonment of the woman by the man constituted a valid divorce; but the ties of consanguinity were strictly acknowledged; children became possessed of all their natural rights, and family tradition traced them to their remotest lengths. (See Wall *v.* Williamson, 11 Ala., 828; Johnson *v.* Johnson's Admr., 9 Mo. Rep., p. 88; Robinson's History of America, book 4.)

It was unquestionably within the power of the Government of the United States—the sovereign—to make the grant, as it did, "TO THEM AND THEIR DESCENDANTS," so as to include as beneficiaries ANY PERSON WHO PROCEEDED FROM THE BODY OF A RECOGNIZED MEMBER OF THE CHOCTAW COMMUNITY AT THE DATE OF THE RATIFICATION OF THE TREATY, HOWEVER REMOTELY.

In the case of J. T. Minor, jr., *v.* Choctaw and Chickasaw Nations (cited in the decision of the Assistant Attorney-General for the Department of the Interior in the Perry case, reported in Departmental Decisions Affecting the Work of the Commission to the Five Civilized Tribes, p. 167), the Choctaw and Chickasaw Citizenship Court held:

"Taking this to be true, then, if there was no marriage the children of Lucy were illegitimate, begotten by a full-blood Choctaw Indian. This court has held in a case (Althea Paul et al. *v.* Choctaw and Chickasaw Nations) that when there was a natural child begotten by a Chickasaw Indian of a white woman the child was entitled to enrollment as a member of the tribe by reason of the Chickasaw blood of his father."

In the Joe and Dillard Perry case (reported in the Departmental Decisions Affecting the Work of the Commission to the Five Civilized Tribes, p. 168) the Assistant Attorney-General construed the rights of descendants of those persons who composed the Choctaw community in 1830 as follows:

"The treaty right (referring to the treaty of 1830) was to the Choctaw and Chickasaw Nations and their descendants. Descendants, as pointed out in the case of James W. Shirley, is a term of wider significance than 'heirs' or 'legitimate issue,' and includes those springing from an ancestor, whether legitimate issue or not."

In the case of Van Buren *v.* Dash (30 N. Y., pp. 393–422), per Dino, Chief Justice, the court said:

"The word 'DESCENDANTS' has reference to the genealogy of the succession of persons in the family relation, and has no necessary connection with the laws of inheritance."

Thus the word "descendants," as used in the treaty of 1830, provided for the succession to the property rights of the Choctaws and Chickasaws.

SOURCE OF CHICKASAW TITLE—TREATY OF 1837.

Negotiations between the Choctaws and Chickasaws and the Government of the United States, running over a period of nearly seven years, culminated on the 17th day of January, 1837, in the Choctaws and Chickasaws entering into a treaty which was ratified by the Senate of the United States and proclaimed as a law on March 24, 1837 (11 Stat. L., 573), by the first article of which it was "agreed by the Choctaws that the Chickasaws shall have the privilege of forming a district within the limits of their (Choctaw) country, TO BE HELD ON THE SAME TERMS THAT THE CHOCTAWS NOW HOLD IT, except the right of disposing of it (which is held in common with the Choctaws and Chickasaws), to be called the Chickasaw district of the Choctaw Nation."

Throughout all the negotiations leading up to the signing of this treaty the Indians had been proceeding under the direction of the Government officers, who had counseled, advised, and urged upon the Choctaws and Chickasaws the advisability of entering into such an agreement. The Chickasaws had been informed by Secretary of War Eaton and General Coffee that the laws of the United States prohibited the purchase by them of any part of the Choctaw lands unless the agreement be entered into in the presence of commissioners representing the Government. (Senate Doc. 512, vol. 4, p. 17, 23d Cong., 1st sess.) It was undoubtedly for these reasons that the Government became a party to the treaty, as well as to provide for a method of settling disputes which might arise over the construction of any provision of the treaty, as appears from article 4, and, lastly, to bring to a successful termination, by the aid of the Government's superior counsel, the negotiations which had been so long pending.

Secretary of War Eaton, in a communication addressed to General Coffee, who was supervising the negotiations between the Choctaws and Chickasaws, under date of March 31, 1831 (Senate Doc. 512, vol. 2, p. 274, 23d Cong., 1st sess.), sets out fully the plan which the Government officers were attempting to induce the Choctaws and Chickasaws to accept, and which plan was evidently embodied in the treaty of 1837. Secretary of War Eaton wrote in part as follows:

"We are much embarrassed on this subject. The Chickasaws, with all their desire to emigrate, can not do so. If a suitable and approved home can not be provided, they must abide where they are and suffer all the inconveniences which subjection to State laws must impose. Within the Choctaw country there is abundant room for both tribes. Their population we estimated at 12,000; but let it be taken at 15,000 and let the Chickasaws, as the fact is, be set down at 5,000, which will be in all 20,000. The country claimed by the Choctaws contains not less than 16,000,000 acres, which will be 800 acres to each soul, an amount ample, and more than sufficient, for all their wants.

"But while the Choctaws are disposed to receive the Chickasaws, the latter are not willing to become a part of their tribe, and desire to remain, as heretofore, a separate, independent people. An arrangement to this effect, with the concurrence of both parties, might perhaps be made. Let the Chickasaws have a district within their country, to be subject to their own rules, with the understanding that each of the other three districts of the Choctaws under their respective chiefs shall also be governed independently by their laws. That a general chief shall be appointed every two or three years, with delegates from each district, to make laws for the whole. Under such an arrangement, properly guarded, the Chickasaws may be satisfied."

This correspondence clearly indicates that the plan of Secretary of War Eaton (who had direct supervision of all Indian affairs), contemplated the purchase by the Chickasaws of an equal, individual interest with the Choctaws in all lands conveyed to the Choctaws under the treaty of 1830. The treaty reflects the plan outlined in the letter of Secretary of War Eaton to General Coffee. By the first article of the treaty we find the Chickasaws purchasing the privilege from the Choctaws of forming a district within the limits of their country "to be held on the same terms that the Choctaws now hold it," except the right of disposing of it (which is held in common by the Choctaws and Chickasaws), to be called the Chickasaw district of the Choctaw Nation, provision for equal representation of the Chickasaws in the Choctaw general council, and the placing of the Chickasaws on an equal footing in every other respect with any of the other districts of the Choctaw Nation, excepting only a voice in the management of the consideration which was paid the Choctaws for the privileges acquired by the Chickasaws under this treaty; the Chickasaw people were to be entitled to all the rights and privileges of the Choctaws, to be subject to the same laws to which the Choctaws were. By the third article of the treaty, the Chickasaws agreed to pay the Choctaws, as a consideration for the rights and privileges acquired, the sum of $530,000. By the fifth article it is declared to be the intention of the Choctaws and Chickasaws that they shall have equal rights and privileges to settle in whatever district they may think proper and to be eligible to all the different offices of the Choctaw Nation, and a vote on the same terms in whatever district they may settle, excepting only that the Choctaws should not vote "for officers in relation to the residue of the Chickasaw fund." The express provision that the Choctaws and Chickasaws should settle in any district in the nation clearly indicates that neither the Choctaws nor the Chickasaws contemplated other than the purchase by the Chickasaws of an individual interest in the Choctaw Nation equal to the individual property rights of the Choctaws.

By the terms and provisions of this treaty the Chickasaws became a part of the Choctaws, being admitted into the Choctaw Nation on equal terms with the Choctaws (excepting only that the Choctaws and Chickasaws reserved the right to manage their separate funds), and thus the Chickasaws and their descendants became equal beneficiaries with the Choctaws and their descendants under the treaty of 1830, while the trustee—the Choctaw Nation—thereafter held the legal title to the property for the use and benefit of both people and their descendants.

TREATY OF 1855.

The preamble of the treaty of June 22, 1855 (11 Stat. L., 611), states the object for which the treaty was negotiated to be:

"Whereas the political connection heretofore existing between the Choctaw and the Chickasaw tribes of Indians has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a readjustment of their relations to each other and to the United States; and

"Whereas the United States desire that the Choctaw Indians shall relinquish all claim to any territory west of the one hundredth degree of west longitude, and also to make provisions for the permanent settlement within the Choctaw country of the Wichita and certain other tribes or bands of Indians, for which purpose the Choctaws and Chickasaws are willing to lease, on reasonable terms, to the United States, that portion of their common territory which is west of the ninety-eighth degree of west longitude; and

"Whereas the Choctaws contend that, by a just and fair construction of the treaty of September 27, 1830, they are of right entitled to the net proceeds of the lands ceded by them to the United States, under said treaty, and have proposed that the question of their right to the same, together with the whole subject-matter of their unsettled claims, whether national or individual, against the United States, arising under various provisions of said treaty, shall be referred to the Senate of the United States for final adjudication and adjustment; and

"Whereas it is necessary for the simplification and better understanding of the relations between the United States and the Choctaw Indians that all their subsisting treaty stipulations be embodied in one comprehensive instrument."

By article 1 of this treaty the boundaries of the Choctaw and Chickasaw country are defined and the Government forever secures and guarantees the lands embraced within the defined boundaries to the "members of the Choctaw and Chickasaw tribes * * * to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole."

Article 2 creates a district for the Chickasaws and defines the boundaries thereof.

Article 3 provides that "the remainder of the country held in common by the Choctaws and Chickasaws shall constitute the Choctaw district."

Article 4 provides that the "government and laws now in operation and not incompatible with this instrument" shall be and remain in full force and effect within the limits of the Chickasaw district until the Chickasaws shall adopt a constitution and enact laws superseding, abrogating, or changing the same.

Article 5 provides that "the Choctaws and Chickasaws shall have the right freely to settle in either the Choctaw or Chickasaw district, and

shall be entitled to all the rights, privileges, and immunities of the citizens of the district in which they settle."

Article 8 provides that "in consideration of the foregoing stipulations" the Chickasaws shall pay the Choctaws the sum of $150,000.

The remaining articles are not material to the questions at issue in this case.

Counsel for the Choctaw and Chickasaw Nations and the United States contend that the second paragraph of article 1 of this treaty, which provides:

"And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their HEIRS and successors TO BE HELD IN COMMON, SO THAT EACH AND EVERY MEMBER OF EITHER TRIBE SHALL HAVE AN EQUAL UNDIVIDED INTEREST IN THE WHOLE: *Provided, however,* No part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

was in effect a new grant to the Choctaw and Chickasaw nations by the United States of the lands ceded the Choctaws in fee simple under the treaty of 1830; and that under this alleged new grant only such persons were entitled to share in the common property as were thereafter recognized by the tribal authorities as members of the tribes and their heirs.

We respectfully submit that the contention of counsel for the Choctaw and Chickasaw nations and the United States is wholly fallacious and untenable.

In the case of the United States *v.* Choctaw Nation (179 U. S., 522, 45 L. ed., 300, 303), Mr. Justice Harlan, delivering the opinion of the court, reviews the Choctaw title in determining a controversy arising out of the treaty of 1866 (eleven years after this treaty was ratified), and says that the title of the Choctaws was acquired by the patent issued in 1842, in pursuance of the terms and provisions of the treaty of 1830, and attaches significance to the grant, which he says was a SPECIAL GRANT, and that it became binding when accepted by the Choctaws.

Thus, on the day this treaty was ratified, we find the Choctaw Nation holding the legal title in fee as TRUSTEE under the grant made in pursuance with the treaty of 1830 for the beneficiaries named in the treaties of 1830 and 1837. The Government of the United States having absolutely and forever passed all its title to these lands by the special grant in fee simple, made in 1842, in pursuance with the terms and provisions of the treaty of 1830, it had no title which it could confer in the year 1855. The lands having been granted to the Choctaw Nation as trustee, for the use and benefit of a designated class of persons, it could not divert the trust to any other use than that for which it was created by the treaty and consummated by the grant. Nor was it the intention of the Government or the Choctaw Nation to do so. There is nothing contained in this treaty which indicates an intention, directly or indirectly, on the part of the Government of the United States, or the Choctaw Nation, acting as trustee, to attempt to make or receive a new grant.

The cession having been made to the Choctaws under the special treaty of 1830, the Chickasaws having purchased an individual right in the common property of the Choctaws equal to the individual holdings of the Choctaws by the treaty of 1837, and the Government having conveyed the lands in fee simple by the patent issued in 1842 in pursuance with the treaty of 1830, the act of Congress approved May 28, 1830, and referred to in the second paragraph of article 1 of this treaty, had, and could have, no bearing on the title to the lands in controversy. This paragraph was evidently inserted in the treaty through the ignorance or carelessness of the Government officers who drafted the instrument, and is not in harmony with the purposes for which the treaty was negotiated, which were mainly for the settlement of political differences between the Choctaws and Chickasaws and the settlement of the claims of the Choctaws against the Government of the United States. The words employed in this paragraph are without legal significance when applied to the common lands of the Choctaws and Chickasaws.

The American and English Encyclopedia of Law, in defining the word "heir," says:

"At common law an heir is he who is born or begotten in lawful wedlock, and upon whom the law casts an estate in lands, tenements, and hereditaments immediately upon the death of the ancestor."

Could the death of an ancestor "cast an estate" in communal lands upon his "heirs," then members of these tribes, who acquired full right to participate in the tribal property by birth? As the ancestor acquired only a life interest in the usufruct of the land, and as that right terminated with his demise, he never had an interest in the communal lands possible of being transmitted to his "heirs." He enjoyed the fruits of his birthright during his life and his rights in the communal lands terminated instantaneously with his demise and passed back to the living beneficiaries under the grant.

It is reasonable to assume, therefore, that this provision was inserted by the Government officers, who prepared the treaty, in the belief that the cession was made under the act of Congress approved May 28, 1830.

TREATY OF 1866.

Counsel for the Choctaw and Chickasaw nations and the United States contend that by article 3 of the treaty of 1866 every person theretofore held in slavery by the Choctaws and Chickasaws should receive 40 acres of the common lands of the said Indians, and that similar allotments should be made to their descendants; that the limited property rights conferred upon ex-slaves and their descendants by this treaty was intended, and did, extinguish the greater property rights to which a person was entitled by reason of his descent from a recognized member of the Choctaw community as it existed in 1830 or the Chickasaw community as it existed in 1837.

We respectfully submit that the contention of the attorneys for the Choctaw and Chickasaw nations and the Government of the United States with reference to article 3 of the treaty of 1866 is wholly fallacious.

Article 3 of the treaty of 1866 provides as follows (14 Stat. L., 769):

"ARTICLE 3. The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98th degree west longitude, known as 'the leased district,' provided that the said sum shall be invested and held by the United States at an interest not less than five per cent in trust for the said nations until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent resident in the said nations at the date of the treaty of Fort Smith and their descendants, HERETOFORE HELD IN SLAVERY among said nations, all the rights, privileges, and immunities, including the right of suffrage of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively, and also to give to such persons who were residents, each as aforesaid, and their descendants, forty acres of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulations the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one-fourth to the latter, less such sum at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations, respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations, respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said territory in such manner as the United States shall deem proper, the United States agreeing within ninety days from the expiration of the said two years to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations."

Under the laws, rules, and regulations required by the treaty to be adopted, what rights were to be conferred and upon what persons? Persons of African descent and held in slavery at the date of the treaty of Fort Smith (September 15, 1865) were given their freedom and were to be given full citizenship in the Choctaw and Chickasaw nations, with limited property rights, of 40 acres of land only. The descendants of those persons held in slavery at the date of the treaty of Fort Smith and born prior to the ratification of the treaty of 1866 were given similar rights. The descendant of any Choctaw or Chickasaw slave born after the ratification of the treaty of 1866 neither acquired nor could acquire either citizenship or property rights in either nation under or by virtue of the laws, rules, and regulations required by the treaty to be subsequently adopted by the respective Indian governments. Therefore, the word "descendants" as it appears in this treaty, does not in the remotest degree conflict with the rights conferred upon "descendants" of Indians under the treaties of 1830 and 1837 in cases of intermarriage, after the ratification of the treaty of 1866, between Indians and the descendants of ex-slaves. Descent from a member of the Choctaw community as it existed in 1830 or the Chickasaw community in 1837 entitled such descendant to participate equally with any full blood in the tribal property, while the descendant of the ex-slave, free of any Indian blood, born after the ratification of the treaty of 1866, acquired no property right of any kind in the Choctaw or Chickasaw Nation by reason of such descent. By this treaty rights were conferred upon persons theretofore held in slavery who had no rights under any previous treaty.

ADOPTION OF LAWS, RULES, AND REGULATIONS BY CHOCTAWS.

The Choctaw Nation on May 21, 1863, duly enacted a law in strict compliance with the terms of the treaty of 1866, hereinabove set out, the first section of which reads as follows:

"*Be it enacted by the general council of the Choctaw Nation assembled,* That all persons of African descent, resident in the Choctaw Nation at the date of the treaty of Fort Smith, September 13, 1865, and their descendants formerly held in slavery by the Choctaws, are hereby declared to be entitled to and invested with all the rights, privileges, and immunities, including the rights of suffrage, of citizens of the Choctaw Nation, except in the annuity moneys and the public domain of the nation."

CHICKASAWS REFUSED TO ADOPT LAWS, RULES, AND REGULATIONS.

The Chickasaw Nation refused, and ever since has refused, to comply with the provisions of the third article of the treaty of 1866 relative to the recognition of ex-slaves and their descendants THERETOFORE HELD IN SLAVERY. THUS NO CHICKASAW EX-SLAVE OR HIS OR HER DESCENDANT ACQUIRED ANY RIGHTS BY VIRTUE OF THIS TREATY IN THE PROPERTY OF THE CHICKASAWS.

Thus the person of African descent HELD IN SLAVERY ON AND PRIOR TO THE 13TH DAY OF SEPTEMBER, 1865, and resident in the nation on that date, AND HIS OR HER DESCENDANTS, BORN PRIOR TO THE TREATY OF 1866, AND THERETOFORE HELD IN SLAVERY, AND SUCH PERSONS ONLY became citizens in law and in fact of the Choctaw Nation with all the rights, privileges, and immunities of any full-blood Choctaw, except the right to participate equally with the Choctaw by blood and descent in the lands and moneys of the tribe. THESE RIGHTS DID NOT PASS TO THEIR DESCENDANTS BORN AFTER THE TREATY OF 1866. THEY COULD NOT BE TRANSMITTED TO THEIR CHILDREN THEREAFTER BORN, and such children were permitted to remain in the nation only during good behavior. Section 7 of the act of the Choctaw council—hereinabove referred to—enacted in conformity with the treaty of 1866 provides:

"*Be it further enacted,* That intermarriage with such freedmen of African descent, who were formerly held as slaves of the Choctaws and have become citizens, shall not confer any rights of citizenship in this nation, and all freedmen who have married or who may hereafter marry freedwomen who have become citizens of the Choctaw Nation, are subject to the permit laws and allowed to remain during good behavior only."

CONSTITUTION EXTENDED TO INDIAN TERRITORY.

Thus we find in the year 1890 the Choctaw and Chickasaw people holding the lands and other tribal property in common under the unchanged terms of the treaties of 1830 and 1837 and the patent issued in 1842. In this year the right of every person who was a member of the Choctaw community in 1830, or the Chickasaw community in 1837, or who was a descendant of any such person, to share in the common trust property of the Choctaws and Chickasaws, became a constitutional property right and was surrounded and protected by all the guaranties of that instrument.

The act of May 2, 1890, provided:

"The Constitution of the United States * * * shall have the same force and effect in the Indian Territory as elsewhere in the United States." (26 Stat. L., 96.)

Where the Constitution has been once formally extended by Congress to Territories neither Congress nor the Territorial legislature can enact

laws inconsistent therewith. (Downs *v.* Bidwell, 182 U. S., 244, 45 L. ed., p. 1100.)

The fifth amendment to the Federal Constitution provides:

"No person shall be * * * deprived of life, liberty, or property without due process of law."

PROPERTY RIGHTS SECURED TO PLAINTIFFS BY THE CONSTITUTION.

The Constitution of the United States applied to the property as well as to the persons of the Choctaws and Chickasaws.

In defining a property right Mr. Justice Bradley, in the case of Campbell *v.* Holt (115 U. S. 620, 29 L. ed., 487), said:

"That clause of the amendment which declared that 'no State shall deprive any person of life, liberty, or property without due process of law' was intended to protect every valuable right which man has.

"The words 'life, liberty, and property' are constitutional terms, and are to be taken in their broadest sense. They indicate the three great subdivisions of all civil right. The term 'property' in this clause embraces all valuable interests which a man may possess outside of himself; that is to say, outside of his life and liberty. It is not confined to mere tangible property, but extends to every species of vested right. In my judgment, it would be a very narrow and technical construction to hold otherwise. In an advanced civilization like ours a very large proportion of the property of individuals is not visible and tangible, but consists in rights and claims against others or against the Government itself."

In the case of Bluejacket v. Commissioners of Johnson County (72 U. S., 18 L. ed., 672) Mr. Justice Davis says:

"If they (Indians) have outlived many things, they have not outlived the protection afforded by the Constitution, treaties, and laws of Congress."

In the case of Doe Mann *v.* Wilson (23 How., 457, 16 L. ed., 584) Mr. Justice Catron, in delivering the opinion of the court, which is cited and relied upon by the Supreme Court in the case of Jones *v.* Meehan (175 U. S., p. 56), said:

"The INDIAN TITLE IS PROPERTY, and alienable unless the treaty had prohibited its sale." (Comet *v.* Winton, 2 Yerg., 148; Blair and Johnson *v.* Pathkiller, 2 Yerg., 414.)

A vested right, as defined by Chancellor Kent, is:

"An estate is vested when there is an immediate right of present enjoyment or a present fixed right of future enjoyment." (4 Kent's Com., 202.)

Are not the individual interests of claimants in the communal properties of the Choctaws and Chickasaws vested interests? Have not the claimants in the case at bar, at all times since their birth, possessed the right of present enjoyment, and, by the terms of the grant, do they not have a fixed right of future enjoyment? If so, their right is a vested right.

In the case of Chae Chan Ping *v.* The United States, the Supreme Court defines a vested property right as distinguished from a political right. Mr. Justice Field, delivering the opinion of the court, said (130 U. S., 32 L. ed., 1077):

"THE RIGHTS AND INTERESTS CREATED BY A TREATY WHICH HAVE BECOME SO VESTED THAT ITS EXPIRATION OR ABROGATION WILL NOT DESTROY OR IMPAIR THEM ARE SUCH AS ARE CONNECTED WITH AND LIE IN PROPERTY CAPABLE OF SALE AND TRANSFER OR OTHER DISPOSITION, NOT SUCH AS ARE PERSONAL AND UNTRANSFERABLE IN THEIR CHARACTER. Thus, in the Head Money cases the court speaks of certain rights being in some instances conferred upon the citizens or subjects of one nation residing in the territorial limits of the other, which are 'capable of enforcement as between private parties in the courts of the country.' 'An illustration of this character,' it adds, 'is found in treaties which regulate the mutual rights of citizens and subjects of the contracting nations in regard to rights of property by descent or inheritance when the individuals concerned are aliens' (112 U. S., 580, 598, 628, 798, 803). The passage cited by counsel from the language of Mr. Justice Washington in Society for the Propagation of the Gospel *v.* New Haven (21 U. S., 8; Wheat., 424, 493, 5:662) also illustrates this doctrine. Here the learned justice observes that 'IF REAL ESTATE BE PURCHASED OR SECURED UNDER A TREATY IT WOULD BE MOST MISCHIEVOUS TO ADMIT THAT THE EXTINGUISHMENT OF THE TREATY EXTINGUISHED THE RIGHT TO SUCH ESTATE. IN TRUTH, IT NO MORE AFFECTS SUCH RIGHTS THAN THE REPEAL OF A MUNICIPAL LAW AFFECTS RIGHTS ACQUIRED UNDER IT.' OF THIS DOCTRINE THERE CAN BE NO QUESTION IN THIS COURT. But far different is this case, where a continued suspension of the exercise of a governmental power is insisted upon as a right, because by the favor and consent of the Government it has not heretofore been exerted with respect to the claimants or to the class to which he belongs. BETWEEN PROPERTY RIGHTS NOT AFFECTED BY THE TERMINATION OR ABROGATION OF A TREATY AND EXPECTATIONS OF BENEFITS FROM THE CONTINUANCE OF EXISTING LEGISLATION THERE IS AS WIDE A DIFFERENCE AS BETWEEN REALIZATION AND HOPES."

CLAIMANTS COULD ONLY HAVE BEEN LEGALLY DISPOSSESSED OF THEIR PROPERTY RIGHTS BY DUE PROCESS OF LAW.

Claimants having a vested undivided property right in the common property of the Choctaws and Chickasaws, they could only have been divested of that right by DUE PROCESS OF LAW, as provided by the fifth amendment to the Federal Constitution. The findings and judgments of the Commission and Secretary of the Interior, which resulted in the denial by the executive officers of claimants' full property rights were LEGISLATIVE findings and judgments, and so declared by the circuit court of appeals, eighth circuit, in the case of Wallace *v.* Adams (143 Fed. Rep., p. 723). We respectfully submit that a legislative finding and decree can not disturb a vested property right and that such a commission can not render judgments and decrees judicial in effect, within the meaning of "due process of law."

In the case of Hurtado *v.* People of California, Mr. Justice Matthews, delivering the opinion of the court, defines "due process of law," and his reasoning therein has been adopted by the Supreme Court of the United States and embodied in its decisions in almost every case involving this question that has come before the court from that day to the present.

He says (110 U. S., pp. 516, 558; 28 L. ed., p. 238):

"Due process of law in the latter (fifth amendment) refers to that law of the land which derives its authority from the legislative powers conferred upon Congress by the Constitution of the United States, exercised within the limits therein prescribed, and interpreted according to the principles of the common law. In the fourteenth amendment, by parity of reasoning, it refers to that law of the land in each State which derives its authority from the inherent and reserved powers of the State, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and the greatest security for which resides in the right of the people to make their own laws and alter them at pleasure. 'The fourteenth amendment,' as was said by Mr. Justice Bradley in Missouri *v.* Lewis (supra), 'does not profess to secure all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. On one side of this line there may be a right of trial by jury, and on the other side no such right. Each State prescribes its own modes of judicial proceeding.'

"But it is not to be supposed that these legislative powers are absolute and despotic, and that the amendment prescribing due process of law is too vague and indefinite to operate as a practical restraint. It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. It must be not a special rule for a particular person or a particular case, but, in the language of Mr. Webster, in his familiar definition, 'The general law, a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial,' so 'that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society,' and thus excluding, as not due process of law, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments and acts directly transferring one man's estate to another, LEGISLATIVE JUDGMENTS AND DECREES and other similar specials, partial, and arbitrary exertions of power under the forms of legislation. Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude. And the limitations imposed by our constitutional law upon the action of governments, both State and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of the Government."

RIGHTS OF ALL PERSONS UNDER TREATIES PROTECTED BY CHOCTAW CONSTITUTION.

In 1860 the Choctaw people adopted a constitution and laws. The constitution provided:

"We, the representatives of the people inhabiting the Choctaw Nation * * * assembled in convention at the town of Doaksville, on Wednesday, the 11th day of January, 1860, in pursuance of an act of the general council, approved October 24, 1859, in order to secure to the citizens thereof the right of life, liberty, and property, do ordain and establish the following constitution and form of government, and do mutually agree with each other to form ourselves into a free and independent nation, NOT INCONSISTENT WITH THE CONSTITUTION, TREATIES, AND LAWS OF THE UNITED STATES, by the name of the Choctaw Nation." (See pp. 5 and 6, Choctaw Laws, 1894.)

By this constitution the Choctaw people expressly recognize the binding force and effect of the treaties with, and the laws of, the United States.

Under this provision of the Choctaw constitution no valid law could be enacted that was in conflict with any treaty of the United States (Robb *v.* Burney, 168 U. S., 218). No person could, by a Choctaw law, be divested of a right of which he or she was possessed under a treaty with the Government of the United States. If, therefore, any law was ever enacted by the Choctaw Nation attempting to exclude any child of either a Choctaw man or woman from participation in the tribal property it would have been unconstitutional, null, and void. But we have been unable to find any law enacted at any time by the Choctaw or Chickasaw governments which attempted, directly or indirectly, to exclude children of recognized members of the tribes from participating in the distribution of the common property, or from being enrolled as unqualified members of the tribes.

The Chickasaw constitution contained a provision similar to that contained in the Choctaw constitution, being almost in the same language. Therefore no Chickasaw could be excluded from a right flowing from, or growing out of, a treaty with the United States by any enactment of the Chickasaw legislature.

CHOCTAW AND CHICKASAW CORRUPT INDIAN ADMINISTRATION OF TRUST PROPERTY RESULTED IN THE UNITED STATES GOVERNMENT INTERFERING.

About the year 1890 representations were made to Congress that the conditions existing in the Choctaw and Chickasaw nations had become intolerable; that neither life nor property was secure under the laws of the tribes; that the officials of the tribes had become corrupt, and that practically the entire Indian estates were being held by a few influential and corrupt individuals to the exclusion of the great majority of the people, who were equally entitled to share in the property under the treaties and the grant.

On the 29th day of March, 1894, the Senate adopted a resolution authorizing the Committee on the Five Civilized Tribes of Indians, or any subcommittee thereof appointed by its chairman, to inquire into the conditions existing in the Choctaw and Chickasaw nations, and clothing said committee, or any subcommittee thereof appointed, with full power to visit the Territories, to take testimony, to require the attendance of witnesses, and to administer oaths.

A subcommittee was appointed, consisting of Senators TELLER, Platt, and Roach, which committee visited Indian Territory and conducted a searching investigation into existing conditions, and on May 7 submitted its report to the Senate. In this report the committee states that the census of 1890 gave the total number of Indians living in the Five Civilized Tribes at 50,055. Continuing, the report says:

"But, in addition to this 50,055 Indians, there are large numbers of claimants to Indian citizenship who may or may not be Indians within the provisions of our treaties. These are put down as 18,636, AND INCLUDE THE COLORED PEOPLE, WHOSE RIGHTS OF INDIAN CITIZENSHIP ARE ADMITTED, AS WELL AS A LARGE NUMBER WHO ARE NOT RECOGNIZED BY THE INDIAN AUTHORITIES AS ENTITLED TO THE RIGHTS OF INDIAN CITIZENSHIP, BUT WHO CLAIM TO BE LEGALLY INDIAN CITIZENS."

According to the census report, then, the population is as follows:

"Indians, 50,055; COLORED INDIANS, COLORED CLAIMANTS TO INDIAN CITIZENSHIP, FREEDMEN, AND COLORED, WHOLLY OR IN PART, 18,636."

In referring to the title held by the Choctaw Nation, the committee says:

"The theory of the Government was when it made TITLE to the lands in the Indian Territory to the Indian tribes as bodies politic that the TITLE WAS HELD FOR ALL OF THE INDIANS OF SUCH TRIBE. All were to be the equal participators in the benefits to be derived from such holding. But we find in practice such is not the case. A few enterprising citizens of the tribe—frequently not Indians by blood, but by intermarriage—have, in fact, become the practical owners of the best and greatest part of these lands, while the title still remains in the tribe, theoretically, for all; YET IN FACT, THE GREAT BODY OF THE TRIBE DERIVES NO MORE BENEFIT FROM THEIR TITLE THAN THE NEIGHBORS IN KANSAS, ARKANSAS, OR MISSOURI.

"According to Indian law (doubtless the work of the most of the enterprising class we have named) an Indian citizen may appropriate any of the unoccupied public domain that he chooses to cultivate. In practice he does not cultivate it, but secures a white man to do so, who takes the land on lease of the Indian for one or more years, according to the provision of the law of the tribe where taken. The white man breaks the ground, fences it, builds on it, and occupies it as a tenant of the Indian, and pays rental either in part of the crop or in cash, as he may agree with his landlord.

"Instances came to our notice of Indians who had as high as 100 tenants, and we heard of one case where it was said the Indian citizen, a citizen by marriage, had 400 holdings, amounting to about 20,000 acres of farm land. We believe that may be an exceptional case, but that individual Indians have large numbers of tenants on land not subduced and put into cultivation by the Indian but by his white tenant, and that these holdings are not for the benefit of the whole people, but of the few enterprising ones, is admitted by all. The monopoly is so great that in the most wealthy and progressive tribe your committee were told that 100 persons had appropriated fully one-half of the best land. This class of citizens take the very best agricultural lands and leave the poorer land to the less enterprising citizens, who in many instances farm only a few acres in the districts farthest removed from the railroads and the civilized centers.

"As we have said, the TITLE to these lands is held by the tribe in TRUST for the people. WE HAVE SHOWN THAT THIS TRUST IS NOT BEING PROPERLY EXECUTED, NOR WILL IT BE IF LEFT TO THE INDIANS, and the question arises, What is the duty of the Government of the United States with reference to this TRUST? While we have recognized these tribes as dependent nations, the Government has likewise recognized its guardianship over the Indians and its obligations TO PROTECT THEM IN THEIR PROPERTY AND PERSONAL RIGHTS.

"If the tribe fails to administer its TRUST PROPERLY by securing to all the people of the tribe EQUITABLE PARTICIPATION IN THE COMMON PROPERTY OF THE TRIBE, there appears to be no redress for the Indian so deprived of his rights, unless the Government does interfere to administer such TRUST.

"IS IT POSSIBLE BECAUSE THE GOVERNMENT HAS LODGED THE TITLE IN THE TRIBE IN TRUST THAT IT IS WITHOUT POWER TO COMPEL THE EXECUTION OF THE TRUST IN ACCORDANCE WITH THE PLAIN PROVISIONS OF THE TREATY CONCERNING SUCH TRUST?

"Whatever power Congress possessed over the Indians as semidependent nations, or as persons within its jurisdiction, it still possesses; notwithstanding the several treaties may have stipulated that the Government would not exercise such power, and therefore Congress may deal with this question as if there had been no legislation save that which provided for the execution of the patent to the tribes.

"If the determination of the question whether the TRUST is or is not being properly executed is one for the courts and not for the legislative department of the Government, then Congress can provide by law how such question shall be determined and how such TRUST shall be administered if it is determined that it is not now being properly administered.

"It is apparent to all who are conversant with the present condition in the Indian Territory that their system of government can not continue. It is not only non-American, but it is radically wrong, and a change is imperatively demanded in the interest of the Indian and whites alike, and such change can not be much longer delayed. The situation grows worse and will continue to grow worse. There can be no modification of the system. It can not be reformed. It must be abandoned and a better one substituted. That it will be difficult to do your committee freely admit, but because it is a difficult task is no reason why Congress should not at the earliest possible moment address itself to this question.

"We do not care to at this time suggest what, in our judgment, will be the proper step for Congress to take on this matter, for the Commission created by an act of Congress, and commonly known as the Dawes Commission, is now in the Indian Territory, with the purpose of submitting to the several tribes of that Territory some proposition for the change in the present very unsatisfactory condition of that country. We prefer to wait and see whether this difficult and delicate subject may not be disposed of by an agreement with the several tribes of that Territory. But if the Indians decline to treat with that Commission, and decline to consider any change in the present condition of their titles and government, the United States must, without their aid and without waiting for their approval, settle this question of the character and condition of their land tenures and establish a government over whites and Indians of that Territory, in accordance with the principles of our Constitution and laws.

"As the matters submitted are so complicated and of such grave importance, the committee has thought proper to submit this preliminary report, and hopes, upon further investigation, to be able to make such further and more specific recommendation as to necessary legislation as will lead to a satisfactory solution of this difficult question."

ACT OF JUNE 10, 1896.

The intolerable conditions existing in these nations or tribes, as disclosed by this report, resulted in the enactment of legislation which had for its object the dissolution of the tribal governments and the division of the TRUST PROPERTY in severalty among THOSE PERSONS ENTITLED THERETO UNDER THE TREATIES with the tribes.

The first important act was the act approved June 10, 1896. This act provided for the continuance of a Commission theretofore created, and known as the Dawes Commission, and directed the Commission as follows:

"That said Commission is further authorized and directed to proceed at once to hear and determine the application of all persons who may apply to them for citizenship in any of said nations, and after said hearing they shall determine the right of said applicant to be so admitted and enrolled: *Provided, however,* That such application shall be made to such Commissioners within three months after the passage of this act. The said Commission shall decide all such applications within ninety days after the same shall be made. That in determining all such applications said Commission shall respect ALL LAWS OF THE SEVERAL NATIONS OR TRIBES NOT INCONSISTENT WITH THE LAWS OF THE UNITED STATES, AND ALL TREATIES WITH EITHER OF SAID NATIONS OR TRIBES, and shall give due force and effect to the rolls, usages, and customs of each of said nations or tribes: *And provided further,* That the rolls of citizenship of the several tribes as now existing are hereby confirmed, and any person who shall claim to be entitled to be added to said rolls as a citizen of either of said tribes and whose right thereto has either been denied or not acted upon, or any citizen who may within three months from and after the passage of this act desire such citizenship, may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days from the date thereof.

"In the performance of such duties said Commission shall have power and authority to administer oaths, to issue process for and compel the attendance of witnesses, and to send for persons and papers, and all depositions and affidavits, and other evidence in any form whatsoever heretofore taken where the witnesses giving said testimony are dead or now residing beyond the limits of said Territory, and to use every fair and reasonable means within their reach for the purpose of determining the rights of persons claiming such citizenship, or to protect any of said nations from fraud or wrong, and the rolls so prepared by them shall be hereafter held and considered to be true and correct rolls of persons entitled to the rights of citizenship in said several tribes: *Provided,* That if the tribe, or any person, be aggrieved with the decision of the tribal authorities or the Commission provided for in this act, it or he may appeal from such decision to the United States district court: *Provided, however,* That the appeal shall be taken within sixty days, and the judgment of the court shall be final.

"That the said Commission, after the expiration of six months, shall cause a complete roll of citizenship of each of said nations to be made up from their records, and add thereto the names of citizens whose right may be conferred under this act, and said rolls shall be, and are hereby, made rolls of citizenship of said nations or tribes, subject, however, to the determination of the United States courts, as provided herein."

DEPARTMENTAL INTERPRETATION OF THIS LAW.

The Assistant Attorney-General for the Department of the Interior, in a decision rendered March 24, 1905, in the case of "Mary Elizabeth Martin, applicant for enrollment as a citizen of the Choctaw Nation," defines the powers of the Commission and the rights of applicants under this law to be:

"The Commission had no authority to * * * deny citizenship to those entitled thereto under treaties and laws with, and of, the United States, or under Indian laws, usages, and customs not inconsistent therewith. * * *

"These powers (referring to the powers of the Commission under this act) were to admit to citizenship persons claiming such right whose right was denied or not recognized by the tribal authorities."

ACT OF JUNE 7, 1897, DEFINING "ROLLS OF CITIZENSHIP."

As there had been numerous tribal rolls prepared in both the Choctaw and Chickasaw nations by different tribal officials at different times and for various purposes, a question arose as to what particular rolls were confirmed by the act hereinabove set out. Accordingly Congress, in an act approved June 7, 1897, defined the words "rolls of citizenship," as used in the act of June 10, 1896, to mean the—

"Last authenticated rolls of each tribe which have been approved by the council of the nation, and the descendents of those appearing on such rolls, and such additional names and their descendants as have been subsequently added." * * *

By operation of this act the name of every descendant of every person whose name appeared on any one of "the authenticated rolls of each tribe" was placed on the roll on which the name of his ancestor appeared by operation of law. In the opinion in the case of Mary Elizabeth Martin, above referred to, the Assistant Attorney-General for the Department of the Interior so holds. Says he:

"By this act (June 7, 1897) descendants of persons on the roll were defined and regarded as on the roll where their parents were found, whether themselves actually on such rolls or not and though born after the roll was made."

But few applications of persons entitled to enrollment were made under the act of June 10, 1896. The number of persons embraced in applications filed under that act for enrollment as Choctaws was 7,137, of which 1,268 were enrolled. Applications for the enrollment of 1,812 persons claiming citizenship in the Chickasaw Nation were submitted and 318 were enrolled. The total number of citizens enrolled up to June 30, 1906, in both nations is approximately 35,000.

NO TRIBAL ROLLS CONFIRMED.

The act of June 7, 1897, did not authorize the Commission to receive applications. The tribal rolls approved by the council of each nation had been confirmed, and the Commission was directed to write the names of the descendants of the ancestor whose name appeared on any confirmed tribal roll on the roll on which the name of the ancestor appeared. The tribal officials refused to deliver over to the Commission the various tribal rolls. The Commission discovered that no tribal roll had been approved, as required by the act of June 7, 1897, and that, therefore, there were in reality no confirmed tribal rolls. The facts as then ascertained by the Commission were subsequently reported to the Department in the case of Bettie Lewis, which is referred to in the Mary Elizabeth Martin case hereinabove quoted.

In this case the Attorney-General for the Department of the Interior refers to and sets out the correspondence of the Commission as follows:

"The report of January 24, 1903, in the case of Bettie Lewis, above mentioned, is to the effect that the Commission never have been furnished any authenticated rolls of citizens of the Choctaw and Chickasaw tribes, and it has no possession or knowledge of any rolls of their citizens made during or prior to 1885, and the Commission has never been furnished any roll prior to the leased district payment roll of 1893, which the Commission uses, together with the 1896 census roll, as the basis for identification of applicants. The Commission, at considerable length, state their correspondence with the executives of these tribes, and its own efforts of investigation.

"The principal chief of the Choctaw Nation advised the Commission, July 17, 1897, that he had refused to approve the last revised roll

made in accordance with an act of council (October, 1896), because he is satisfied there are some names thereon 'that have been registered through fraud or misrepresentation.' The Governor of the Chickasaw Nation, July 22, 1897, stated that 'we have only one authenticated roll of citizens, and that is the one approved by the legislature in 1896.' The Commission also mention having discovered and obtained from individual memoranda rolls made by Commissioners Ishatubby and Maytubby, of Choctaw Indians residing in the nation, and states that 'IT HAS BEEN THE PRACTICE OF TRIBAL OFFICIALS CHARGED WITH ANY DUTY IN CONNECTION WITH TRIBAL ROLLS TO WITHDRAW THEM FROM THE EXECUTIVE OFFICES, WHEN NECESSARY, AND TO RETAIN THEM AMONG THEIR PERSONAL EFFECTS.'

"THE COMMISSION STATES ITS CLEAR CONVICTION TO BE 'THAT THERE HAD NEVER, PRIOR TO THE APPROVAL OF THE ACT OF CONGRESS OF JUNE 10, 1896, BEEN ANY ROLLS OF THE CITIZENS OF THE CHOCTAW AND CHICKASAW NATIONS WHICH HAD BEEN RATIFIED AND CONFIRMED BY THE LEGISLATIVE BODIES OF THESE TWO NATIONS OR HAD RECEIVED THE APPROVAL OF THE CHIEF EXECUTIVES. IT IS MATTER OF GENERAL OPINION IN SAID NATIONS THAT THE ROLLS MADE PRIOR TO THAT TIME WERE MERELY ROLLS MADE UP SEPARATELY ACCORDING TO COUNTIES AND DISTRICTS, BY INDIVIDUAL CENSUS TAKERS IN SUCH COUNTIES AND DISTRICTS, AND WHICH WERE NEVER BROUGHT TOGETHER OR CONSOLIDATED SO AS TO FORM A COMPLETE ROLL OF TRIBAL MEMBERS.'"

The Choctaw and Chickasaw nations denied the constitutional power of Congress to enact legislation dissolving their tribal governments. The Commission was powerless to prepare tribal rolls. Citizens of the nations would not make applications to the Commission for enrollment. The tribal governments refused the Commission access to their tribal records. The Commission could not compel them to deliver up tribal records essential to a proper adjudication of applications for citizenship. Accordingly the Commission reported the facts to the committees of Congress, stating that it was rendered powerless to perform the work which Congress intended it to perform, viz, the preparation of correct and complete Choctaw and Chickasaw citizenship rolls.

REPORT OF HOUSE INDIAN COMMITTEE ON PENDING BILL.

The report of the House Indian Committee on the then pending bill, made March 1, 1898, and being entitled "Laws for the Indian Territory," to accompany H. R. 8581 (Rept. No. 593, 55th Cong., 2d sess.), and submitted by Representative CURTIS, explains the necessity for additional legislation to enable the Commission to enroll all persons entitled to enrollment as citizens of the Choctaw and Chickasaw nations, as follows:

"Provision has heretofore been made for the making of rolls of citizenship of the various tribes, but the Commission authorized to do the work is of the opinion that to do equal justice to all concerned they should have additional authority, and we believe this measure provides for the settlement of the question of citizenship, so that when the rolls are made the interest of all concerned will have been fully protected and this vexed and important question will be settled forever."

Acting upon this advice, Congress enacted the bill reported, being the act approved June 28, 1898, giving the Commission plenary power to prepare tribal rolls. It conferred upon it the power to compel persons to appear before it, to subpœna witnesses and to compel them to testify under oath, to compel the Choctaw and Chickasaw tribal governments to deliver over to the Commission tribal rolls and records. In fact, the Commission was given every power necessary to the preparation by it of COMPLETE AND CORRECT TRIBAL ROLLS and directed by the statute to so do. Here are the powers and the instructions given it under and by the statute:

ACT OF JUNE 28, 1898.

"That in making the rolls of citizenship of the several tribes as required by law, * * * said Commission is authorized and directed to make correct rolls of citizens by blood of all the other tribes (including the Choctaws and Chickasaws), eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants, born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and laws of said tribes.

"Said Commission shall make such rolls descriptive of the persons thereon, so that they may be thereby identified, and it is authorized to take a census of each of said tribes, or to adopt any other means by them deemed necessary to enable them to make such rolls. They shall have access to all rolls and records of the several tribes, and the United States court in Indian Territory shall have jurisdiction to compel the officers of the tribal government and custodians of such rolls and records to deliver same to said Commission, and on their refusal or failure to do so to punish them as for contempt; as also to require all citizens of said tribes, and who should be so enrolled, to appear before said Commission for enrollment at such times and places as may be fixed by said Commission, and to enforce obedience of all others concerned so far as the same may be necessary to enable said Commission to make rolls as herein required, and to punish anyone who may in any manner or by any means obstruct said work.

"It shall make a correct roll of all Choctaw freedmen entitled to citizenship under the treaties and laws of the Choctaw Nation, and all their descendants born to them since the date of the treaty.

"It shall make a correct roll of Chickasaw freedmen entitled to any rights or benefits under the treaty made in 1866 between the United States and the Choctaw and Chickasaw tribes and their descendants born to them since the date of said treaty, and 40 acres of land, including their present residences and improvements, shall be allotted to each, to be selected, held, and used by them until their rights under said treaty shall be determined in such manner as shall be hereafter provided by Congress.

"No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship.

"The members of said Commission shall, in performing all duties required of them by law, have authority to administer oaths, examine witnesses, and send for persons and papers, and any person who shall willfully and knowingly make any false affidavit or oath to any material fact or matter before any member of said Commission or before any other officer authorized to administer oaths, to any affidavit or other paper to be filed or oath taken before said Commission, shall be deemed guilty of perjury, and, on conviction thereof, shall be punished as for such offense.

"The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws * * * shall alone constitute the several tribes which they represent."

PART OF ENACTMENT UNCONSTITUTIONAL.

Congress could not legally restrict the right to share in the trust property to those who had "HERETOFORE REMOVED TO AND IN GOOD FAITH SETTLED IN THE NATION IN WHICH HE CLAIMS CITIZENSHIP." A residence upon the land in the Choctaw and Chickasaw nations was not one of the conditions of the grant, which was in fee simple to the Choctaw Nation in trust for the exclusive use and benefit of a designated class of people. Congress, fifty-five years after the grant was made, could not impose this additional requirement and thereby exclude a part of the designated class for whose benefit the trust was enacted. By the treaty it was expressly provided that those persons who did not remove to the western reserve SHOULD NOT LOSE ANY OF THEIR RIGHTS IN THIS TRUST PROPERTY, and Congress could not constitutionally say, as it did say in this enactment, that unless they had removed they should forfeit their interest in this trust property.

The rights of claimants in this trust property were VESTED RIGHTS, and it is elementary law that Congress can not disturb a VESTED RIGHT. But if Congress had possessed the constitutional power to have restricted property rights in this trust property to those persons who actually resided in the land it would not knowingly have done so, for such would have been contrary to the long-established policy of the Government, by which policy inducements were offered to reservation Indians who would abandon their tribal relations and adopt the ways of civilized life. One of the solemn assurances given every such Indian was that he should not lose any of his rights to share in any annuities, moneys, or lands belonging to their tribes by abandoning their tribal relations and adopting the ways of civilized life. The act of May 20, 1862 (18 Stat. L., 420), provided:

INDIAN HOMESTEADS AND ALLOTMENTS OF LANDS TO INDIANS IN SEVERALTY.

"SEC. 15. (Certain Indians entitled to benefit of homestead laws.) That any Indian born in the United States who is the head of a family or who has arrived at the age of twenty-one years, and who has abandoned or may hereafter abandon his tribal relations, shall, on making satisfactory proof of such abandonment, under rules to be prescribed by the Secretary of the Interior, be entitled to the benefits of the act entitled 'An act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, and the acts amendatory thereof, except that the provisions of the eighth section of the said act shall not be held to apply to entries made under this act: *Provided, however*, That the title to lands acquired by any Indian by virtue hereof shall not be subject to alienation or incumbrance, either by voluntary conveyance or the judgment, decree, or order of any court, and shall be and remain inalienable for a period of five years from the date of the patent issued therefor: *Provided*, THAT ANY SUCH INDIAN SHALL BE ENTITLED TO HIS DISTRIBUTIVE SHARE OF ALL ANNUITIES, TRIBAL FUNDS, LANDS, AND OTHER PROPERTY THE SAME AS THOUGH HE HAD MAINTAINED HIS TRIBAL RELATIONS; AND ANY TRANSFER, ALIENATION, OR INCUMBRANCE OF ANY INTEREST HE MAY HOLD OR CLAIM BY REASON OF HIS FORMER TRIBAL RELATIONS SHALL BE VOID."

Sections 1, 2, and 3 of the act of August 9, 1888 (25 Stat. L., 392), and section 1 of the Indian appropriation act of June 7, 1897 (30 Stat. L., 90), extended similar inducements and protection to Indian women and their children.

In the case of the reservation Indian, where the fee to the land is held by the United States, the Government can impose any requirement Congress may see fit to impose by enactment, but in the case of the TRUST PROPERTY in controversy Congress had no power to impose any requirements whatever in addition to those imposed in the treaty creating the TRUST, and RESIDENCE ON THE LAND WAS NOT ONE OF THE CONDITION OF THE GRANT.

ALLOTMENTS TO CHOCTAW AND CHICKASAW FREEDMEN PURE GRATUITIES.

Again, the portion of the above-quoted enactment directing the Commission to enroll the descendants of Choctaw and Chickasaw ex-slaves born since the treaty of 1866 was unconstitutional, null, and void. They were expressly barred by the treaty of 1866. In the Chickasaw Nation NO PERSON HELD IN SLAVERY BY THE CHICKASAWS OR HIS OR HER DESCENDANT HAD ANY RIGHT IN THIS TRUST PROPERTY. This question has been adjudicated by the Court of Claims and the Supreme Court of the United States. It was referred to the Court of Claims by the act approved July 1, 1902, and that court held, in an opinion rendered April 4, 1904, that neither the Chickasaw freedmen nor their descendants WERE ENTITLED, UNDER THE TREATY OF 1866 OR ANY OTHER TREATY, TO ALLOTMENTS OF LAND, and subsequently rendered judgment against the United States in the sum of $130.16 for each allotment of 40 acres made to every freedman or his or her descendants out of this TRUST PROPERTY. The opinion of the Court of Claims was affirmed by the Supreme Court of the United States in the case entitled: "Chickasaw and Choctaw Nations *v.* United States," and reported in 193 U. S., page 114.

In the Choctaw Nation the Government has ARBITRARILY ALLOTTED LANDS TO THE DESCENDANTS OF FREEDMEN BORN SINCE THE TREATY OF 1866, AND THEREBY CONFISCATED A PORTION OF THIS TRUST PROPERTY BY SHEER FORCE OF POWER AND GIVEN IT TO THESE NEGROES.

VALID PROVISIONS OF THE LAW.

It will be observed that the first sentence of this enactment directed the Commission:

"That in making the rolls of citizenship of the several tribes as required by law."

What was the law? It was the treaty under which the grant was made and by which the trust was created. That was the ONLY LAW for the guidance of the Commission to "make correct rolls of citizens by blood. * * *"

Did this mean full bloods or mixed bloods? It meant ANY PERSON possessed of Choctaw or Chickasaw Indian blood, even down to the most attenuated proportions. It meant THEM AND THEIR DESCENDANTS TO THE REMOTEST DEGREE, for the act in order to be constitutional could not impair vested rights, and any other construction would have impaired vested rights.

The provision—

"Said Commission is authorized and directed to make correct rolls of citizens by blood, * * * eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto and their descendants born since such rolls were made"—

did not mean that the Commission should secure and use exclusively the tribal rolls made by the corrupt officials of these tribes, but it meant that the Commission should secure and use ALL rolls made of the membership of these tribes. It meant what Assistant Attorney-General Van Devanter—in an official opinion rendered under date of March 17, 1899, for the guidance of the Commission in the preparation of these tribal rolls under this act of June 28, 1898, and which opinion was approved by the Secretary of the Interior and thereby became a law of the Department—said it meant when he construed and defined the above language to mean:

"The Commission was authorized and directed to enroll the persons indicated, and to investigate the right of all other persons whose names were found upon ANY TRIBAL ROLL, and to omit all such as may have been placed there by fraud or without authority of law. They were not authorized to add any name not found upon SOME ROLL of the tribe, except those of descendants of persons rightfully upon some roll."

But the Commission, in the face of these instructions, used only such rolls as were furnished it by these Indian officials as a basis for the preparation of the final citizenship rolls, notwithstanding the fact that at that very moment there were official rolls, numbering forty or fifty, prepared by Government officials and agents from time to time and running over a period of sixty years, and which were authentic and reliable rolls of the tribes in the custody and possession of the Secretary of the Interior and the Secretary of the Treasury.

ACT DID NOT REQUIRE SUBMISSION OF APPLICATION.

It will be observed that this act did not require the claimant to make an application to the Commission, but did direct the Commission to go out into the field and summon all persons claiming any rights in this trust property to appear before it, and the Commission was directed to examine them under oath, and the law clothed the Commission with ample power to compel every person appearing before it to testify under oath.

That it did not require the submission of an application appears from the opinion of Assistant Attorney-General Van Devanter hereinbefore cited, in which he says:

"The act of 1897 did not provide for new applications for citizenship. * * * Neither did the act of 1898 make any provisions for new applications for citizenship."

EXAMINATIONS NOT CONDUCTED AS DIRECTED BY THE DEPARTMENT.

Commissioner of Indian Affairs W. A. Jones, under date of July 25, 1899, prepared official instructions to the Commission for its guidance in the preparation of these tribal rolls, and on August 8, 1899, those instructions were approved by the Secretary of the Interior and thereby became a law of the Department. In those instructions the Commission was directed as follows:

"The rolls as made up by your Commission must, to become final, receive the approval of the Secretary of the Interior. It will therefore be necessary for you to make a record in all cases sufficient to enable this Office and the Department to take intelligent action in the premises, and especially in those cases where your decision either for or against the right of any person to have his name appear upon the roll is complained of.

"For the purpose of this record you will require each applicant for enrollment to present himself in person before the Commission at one of its appointments within the tribe in which such applicant claims right to enrollment, for examination under oath, his statements to be taken down by the Commission, upon which the Commission will determine his right to enrollment, and such record and action of the Commission will be preserved and transmitted with the rolls to be considered by this Office and the Department when the rolls made by the Commission are submitted for the approval of the Secretary of the Interior."

Tams Bixby, chairman of the Commission to the Five Civilized Tribes, and who supervised the examination and enrollment of persons under this act of June 28, 1898, appeared before the select committee of the Senate at Muskogee on the night of November 16, 1906, and under oath testified as follows:

"Q. Were you in the field when applicants were examined and identified under the act of 1898?

"Commissioner BIXBY. I was in the Chickasaw Nation in the fall of 1898.

"Q. Were you in charge of the examination and identification of either the citizens by blood, freedmen, or intermarried?

"Commissioner BIXBY. I presided in the tent at which the applicants who claimed enrollment by reason of Chickasaw blood or Choctaw blood presented themselves.

"Q. Was everything that was said by the applicant at the time he or she appeared before you for enrollment entered upon the examination record, such as that [exhibiting paper to the witness]?

"Commissioner BIXBY. No, sir; not at all.

"Q. Such portions of their statement as you deemed proper to place upon it?

"Commissioner BIXBY. WE DID NOT TAKE ANY TESTIMONY IN OUR TENT AT ALL." (S. Rept. No. 5013, pt. 1, 59th Cong., 2d sess., pp. 498–500.)

A. S. McKennon, who was a member of the Commission in 1898 and 1899 appeared before the select committee of the Senate sitting at South McAlester in November, 1906, and under oath testified that he had charge of the work of the enrollment of persons of mixed Choctaw or Chickasaw Indian and negro blood. When asked by a member of the committee whether this class of persons were enrolled as freedmen, Commissioner McKennon replied:

"Yes, sir; I simply addressed myself to the task of determining whether they or their ancestors were slaves of the Chickasaws; if so, I enrolled them; if not, they were not entitled." (S. Rept. No. 5013, pt. 1, 59th Cong., 2d sess., pp. 946–947.)

When persons of mixed Indian and negro blood appeared before members of the Commission and demanded that they be examined as to their Indian blood, and insisted upon the Commission making a record of their statements, their requests were not only refused, but in some instances they were forcibly ejected from the tent in which full bloods and persons of mixed Choctaw or Chickasaw Indian and white blood were being enrolled, as will appear from the following affidavits:

AFFIDAVIT OF CHARLES COHEE.

[United States of America, Indian Territory, southern judicial district.]

Charles Cohee, first being duly sworn, on oath states that he is 57 years of age, a resident of the Chickasaw Nation, Ind. T., and lives at the town of Berwyn, in said nation and Territory; that he is enrolled as a Chickasaw freedman, and that on the 1st day of September, 1898, he was appointed by R. M. Harris, governor of the Chickasaw Nation, a member of the committee to sit with the Dawes Commission for the purpose of identifying applicants for enrollment as freedmen; that he was again appointed to the same position by Governor Johnson, in April, 1899, and that he worked every day with the Commission during their sittings in the Chickasaw Nation and most of the time during their sittings in the Choctaw Nation.

Affiant further states that at the beginning of the work the committee of which he was a member, in making statements to the Dawes Commission of the status of applicants, made particular mention of those who claimed to have Indian blood; that the applications of such persons claiming Indian blood were for a while received by the Commission, but that in a short time—about fifteen days after the committee began sittings—all such applications were rejected by the said Dawes Commission, and the committee of which affiant was a member was informed that those applicants who were born to slave mothers, or to negro women who were descended of slaves, were freedmen, and would be enrolled as such only, and the said committee was advised to discontinue hearing the statement of applicants as to their Indian blood, as in no case would they be enrolled as Indian citizens; and that therefore the said committee from that time on, with possibly a few exceptions, refused to hear statements of persons of mixed colored blood of their claim that they were possessed of Indian blood in any degree whatever; that the said committee from that time on, in stating to the Commission status of applicants, only made mention of such family relation as would establish their rights as freedmen, and made no mention whatever of the existence of Indian blood, although in many instances they knew applicants were possessed of such.

CHARLES COHEE.

Subscribed and sworn to before me this 21st day of November, 1905.

[SEAL.] J. A. MCNAUGHT, *Notary Public.*

My commission expires March 17, 1909.

AFFIDAVIT OF W. L. BENNETT.

[United States of America, Indian Territory, southern district.]

W. L. Bennett, first being duly sworn, on oath states that he is 35 years old, a resident of the Chickasaw Nation, Indian Territory, and lives at the inland town of Woodford, in said nation.

Affiant further states that when the Commission to the Five Civilized Tribes came down into Choctaw and Chickasaw country for the purpose of enrolling persons who claimed rights in either of the said nations, a committee of freedmen was appointed to act on behalf of the nation with said Commission for the purpose of aiding them in identifying persons entitled to enrollment as freedmen of the nations. He states that he accompanied said committee in the capacity of an employee and was with them continuously from the time they began their work at Stonewall, Ind T., until the Commission finished its work at Ardmore, Ind. T.

He further states that it was a rule of the Commission to the Five Civilized Tribes that when a person appeared in the tent wherein applications were received for enrollment as citizens by blood and who looked to be a freedman, he was not allowed to make application there, but was directed to another tent, in which application for enrollment as freedmen only was received. It was, further, a rule of said Commission that no person claiming either as a citizen by blood or as a freedman would be enrolled if their mother was a States woman. He states that this rule of the Commission, in as far as it affected freedmen, was shortly changed, and persons were enrolled as freedmen whether they descended as such from either mother or father, but that the rule was never changed, so far as affiant can now remember, in the matter of the enrollment of persons of negro blood who claimed descent from an Indian citizen.

Affiant further states that so far as he can now remember he does not recall a single instance in which an application was received by the Commissioner in charge of the tent wherein application was made for enrollment as citizens by blood, but that in each and every instance persons of mixed negro and Indian blood who appeared at that tent and asserted their rights to be enrolled as citizens of the Chickasaw Nation were directed to the freedmen tent.

Affiant states that hundreds of persons were thus prevented from making application for enrollment as citizens by blood of the Chickasaw Nation.

W. L. BENNETT.

Subscribed and sworn to before me this the 8th day of March, A. D. 1906.

[SEAL.] MARY J. TAYLOR,

Notary Public within and for southern district of the Indian Territory.

My commission will expire March 10, 1907.

AFFIDAVIT OF THOMAS NORMAN.

[United States of America, Indian Territory, southern district.]

Thomas Norman, first being duly sworn, on oath states that he is a practicing attorney at law at the present time, in good standing, with an office in Ardmore, Ind. T., of which place he is a resident.

Affiant further states that in 1898, when the Commission to the Five Civilized Tribes was established in Ardmore for the purpose of receiving applications of persons claiming rights in the Chickasaw Nation, he was frequently before said Commission in behalf of applicants.

He states that the Commission had two or three different tents—one in which they enrolled persons claiming by blood, another in which they enrolled freedmen, and the third in which they enrolled persons claiming by intermarriage, adoption, etc.; that to his personal knowledge, when a person presented himself to the Commission in the tent where the enrollments by blood were being made, who had the appearance of a freedman, he was directed to the tent in which enrollments of freedmen were being made, and that the application of such persons were not received in the tent where enrollments by blood were made.

He further states that it became a matter of common knowledge that persons who were freedmen, or who had the appearance of freedmen, would be received by the Commission and allowed to make application in that tent only wherein freedmen as such were enrolled.

THOS. NORMAN.

Subscribed and sworn to before me this 8th day of March, 1906.

[SEAL.] J. L. RIGGINS, *Notary Public.*

Commission expires January 27, 1910.

Even when persons of mixed Choctaw or Chickasaw Indian and negro blood attempted to make a record of their requests by addressing the Commission in writing, their communications were returned to them accompanied by a printed form and notice from the Commission that the Commission would not receive their applications for enrollment as Indians, BUT IF THEY WOULD FILL OUT THE BLANK FORM INCLOSED the Commission would enroll them as freedmen.

"DEPARTMENT OF THE INTERIOR,
"COMMISSION TO THE FIVE CIVILIZED TRIBES,
"Muskogee, Ind. T., March 16, 1901.

"PRINCE BUTLER, *Grant, Ind. T.*

"DEAR SIR: Receipt is hereby acknowledged of the application for enrollment as a citizen of the Choctaw Nation of George Butler, the infant son of Prince and Mary Butler, born April 3, 1900.

"The application is again returned for the reason as stated in the Commission's letter of the 23d of February. The mother of the child appears upon our records as listed for enrollment as a Chickasaw freedman. There is inclosed you herewith a new blank application, which you will have made out in conformity with the corrections made in lead pencil upon the application returned you herewith.

"Upon return of the new application in proper form for the enrollment of the child as a freedman, the matter will be given further consideration.

"Yours, truly,

_____ _____,
"Acting Chairman."

In order, however, to make their work of enrollment of this class of people final, the Commission examined many of them under oath SOLELY AS TO THEIR NEGRO BLOOD AND DESCENT FROM AN ANCESTRY ONCE HELD IN INVOLUNTARY SERVITUDE AND DID NOT ASK THEM ONE QUESTION AS TO THEIR INDIAN BLOOD, as will appear from the examination records set out on pages 1514 to 1517, Senate Report No. 5013, part 2, Fifty-ninth Congress, second session.

Commissioner Tams Bixby testified under oath before the Senate committee at its hearing at Muskogee in November, 1906, that only persons of mixed Choctaw or Chickasaw Indian and negro blood WERE EXAMINED UNDER OATH AND THEIR TESTIMONY REDUCED TO WRITING, and that NO OTHER CLASS OF PERSONS WERE SUBJECTED TO SUCH EXAMINATION. (S. Report 5013, part 1, 59th Cong., 2d sess., p. 500:)

Commissioner McKennon testified (see Senate Report No. 5013, part 1, 59th Cong., 2d sess., pp. 946–947) that this class of people were examined solely as to their descent from ex-slaves.

It thus conclusively appears from the sworn testimony of the men who had charge of the work that the census rolls prepared, which were to form the basis for the final citizenship rolls, upon which this trust property was to be distributed, were not made either in conformity with the provisions of the statute or in conformity with the instructions of the Department. The rotten tribal rolls used by the Commission for the identification of the persons appearing before it were prepared by the same corrupt officials who were directly responsible for the interference on the part of the Government of the United States in the affairs of the Choctaws and Chickasaws in order to protect the rights of the great majority of the legal and equitable beneficiaries under the trust. From this polluted sewer was to ultimately spring CORRECT rolls of citizenship.

THE ACT OF MAY 31, 1900.

In May, 1900, an amendment was inserted in the Indian appropriation bill of that year, in conference, providing as follows:

"That said Commission shall continue to exercise all authority heretofore conferred on it by law. But it shall not receive, consider, or make any record of any application of any person for enrollment as a member of any tribe in Indian Territory who has not been a recognized citizen thereof and duly and lawfully enrolled or admitted as such, and its refusal of such application shall be final when approved by the Secretary of the Interior."

Bear in mind that the act of 1898 did not require the submission of an application; that the duty of ascertaining all the beneficiaries in this trust property devolved wholly upon the Commission. By this act of May 31, 1900, the Commission could not receive, consider, or make any record of an application submitted by any person who had not been a recognized citizen of the tribes and duly and lawfully enrolled by the Commission or by the courts—the latter under the act of June 10, 1896.

Either the author of this amendment did not realize its frightful results, or he deliberately sought by legislation and the use of all the power of the Government of the United States to exclude thousands of persons of Choctaw or Chickasaw Indian blood who were in law, equity, and good conscience entitled to share in this tribal estate, and who had a vested right therein, and thereby increase the individual shares of those who had been enrolled, largely through favoritism, by the Commission.

ACT APPROVED JULY 1, 1902.

The exclusion act of May 31, 1900, was followed by a provision inserted in the supplemental agreement approved July 1, 1902. That agreement provided as follows:

"The rolls of the Choctaw and Chickasaw citizens and Choctaw and Chickasaw freedmen shall be made by the Commission to the Five Civilized Tribes in strict compliance with the act of Congress approved June 28, 1898 (30 Stats., 495), and the act of Congress approved May 31, 1900 (31 Stats., 221), except as herein otherwise provided. * * *"

If the author of this provision had deliberately attempted to so confuse the language therein employed as to render it utterly meaningless he could not have succeeded more admirably. How could the rolls of citizenship be made in strict compliance with an act that did not require the submission of an application, but directed the Commission to ascertain all the rightful beneficiaries and enroll them, and provided that when the rolls were "so made," and approved by the Secretary of the Interior, they shall be final, and at the same time be made in strict compliance with an act that PROHIBITED THE COMMISSION FROM RECEIVING, CONSIDERING, OR MAKING ANY RECORD OF ANY APPLICATION OF ANY PERSON NOT THERETOFORE ENROLLED.

This was a beautiful dish of legal hodgepodge or succotash to be served up to a Commission composed of laymen; for at the time this work was being done there was not a lawyer on the Commission. We submit that no living human being can with absolute certainty tell what the meaning of this language is, or what the powers of the Commission were under it, and this will never be known until decided by a court of competent jurisdiction.

PREPARATION OF FINAL CITIZENSHIP ROLLS.

From these census rolls, notoriously inaccurate and incomplete, the Commission of January 1, 1902, commenced the work of the preparation of the final citizenship rolls. No testimony had been taken and made of record; no person had been examined under oath, except persons of Choctaw or Chickasaw Indian and negro blood, and their examination being conducted solely for the purpose of ascertaining their descent from an ancestry once held in slavery; thousands of persons whom it was the duty of the Comimssion under positive law to enroll were refused enrollment and denied the right to have a record made of their cases. The final citizenship rolls thereafter to be prepared must of necessity have been inaccurate and incomplete.

The only record of the examination of persons appearing before the Commission under the act of 1898 made by the Commission was such notations as it saw fit to enter upon a card which was known as a "field card." (See Commissioner Bixby's testimony, Senate Report No. 5013, pt. 1, 59th Cong., 2d sess., p. 499.) The Commission made up the final citizenship roll from these field cards with the limited notations made thereon.

Each case acted upon by the Commission was forwarded to the Secretary of the Interior for final approval. The field cards were not transmitted as a part of the record in the case, nor were the claimants or their attorneys permitted to inspect the field cards, although the Commission claimed that these cards were a part of the official records in the case. On page 501 of part 1 of Senate Report No. 5013, Mr. Bixby testified as follows:

"Q. Were those examination records the only records made by the Commission at that time?

"Commissioner BIXBY. No, sir; they made a card also in the freedmen's tent.

"Q. In the adjudication of cases before your Commission, do you consider that card as a portion of the evidence?

"Commissioner BIXBY. Yes, sir."

William O. Beall, an official of the Commission and in charge of the Choctaw and Chickasaw enrollment division at the time of the final rolls were being prepared testified, before W. D. Foulke, special inspector for the Department, on November 20, 1906, under oath, page 95, Senate Document No. 357, Fifty-ninth Congress, second session, as follows:

"Q. Since you considered it your duty to notify the Department of every material record in a case, will you explain why a notice of the contents of the field cards or copies of the field cards were not sent up with the decision in cases?—A. Do you want my opinion, or as a matter of fact?

"Q. As a matter of fact.—A. As a matter of fact, it has never been the policy of the office to do that.

"Q. Of the Commission generally, or the Choctaw or Chickasaw division?—A. Never to my personal knowledge, since I have been employed here. I believe that these proceedings have been the first that ever a card has been taken out of the vaults to be made a part of the record in any proceedings.

"Q. Is it the first time that a copy has been made of the contents of a card?—A. Since the approval of the act of April, 1906, authorizing copies of records to be made, the Commissioner has made such copies. I don't believe, though, that any such copy of any card in any of the divisions was ever attached to and made a part of any enrollment record."

The tribal rolls prepared by the Indian officials, and which were exclusively used by the Commission in the preparation of the final citizenship rolls, were kept secret by the Commission, and no claimant or his or her attorney was permitted to inspect them to ascertain whether the name of the claimant appeared thereon, except in occasional cases where the Secretary remanded the cases to the Commission with instructions to take evidence and to permit an inspection of the record, and then the claimant was permitted at the hearing to inspect a particular roll which the claimant might designate.

At the hearing held at Muskogee, Okla., in November, 1906, before Special Inspector W. D. Foulke, on charges involving the official misconduct of an official of the Commission in the adjudication of the rights of the claimants, Mr. Bixby testified, under oath, as follows (Senate Doc. No. 357, 59th Cong., 2d sess., p. 58):

"Q. You stated that the tribal rolls submitted by the tribes or secured from the tribes were not open to inspection by persons for examination?—A. Yes, sir.

"Q. What did you mean by 'persons?'—A. I mean everybody or anybody.

"Q. Why was it you refused permission to counsel for applicants to inspect these rolls?—A. We never refused to produce the tribal enrollments on the trial of a case.

"Q. Wasn't an inspection of those rolls essential to the preparation of a petition, either for enrollment or for transfer?—A. Not in my judgment; that would be a question of opinion, I think.

"Q. You stated that neither the attorneys nor applicants were permitted to inspect those rolls?—A. Yes, sir."

Thus the census taken, based upon worthless, incomplete tribal records, which records were kept secretly by the Commission—no person having an interest in the tribal property being permitted to inspect them, and no person appearing before the Commission being subjected to such examination under oath, as appears from the records, as would enable either the Commission or the Secretary to correctly determine his status either as an Indian or a freedman, and no examination record being made of persons enumerated by the Commission as blood citizens—were the records upon which the determination of the rights of claimants, as well as all others, in the trust property of the Choctaw and Chickasaw tribes, was based.

When the names of the claimants appeared on the tribal rolls the Commission would not insert either that fact or copy of the entry on the roll, in the record, or permit any objection of the claimant or his attorney to the action of the Commission to be made of record, as will appear from the testimony of W. O. Beall, an official of the Commission, in Senate Document No. 357, Fifty-ninth Congress, second session, page 85, wherein he testified as follows:

"Q. Then I will go back to the proposition of a few moments ago, that if this was not a confirmed roll, and the country rolls were not confirmed rolls, and one had no greater effect than the other, why did you refuse to incorporate a statement of what one shows, and insist upon including in the record a statement of what the other shows?—A. The roll that is before us, known as the 1896 Choctaw census roll, was one of the rolls that were officially furnished the Commission to the Five Civilized Tribes by the Choctaw tribal authorities of the census enumeration in 1896. As late as 1903 or 1904 the Commission secured from different persons—some, I think, were citizens of the Choctaw Nation, others were citizens of the United States—as far as they

could, the various records and memoranda that were scattered throughout the country.

"Q. Didn't the act of Congress direct the Commission to secure and use all rolls and all information in possession of any of the citizens of the nation and officials of the nation, to be used in making the correct rolls of the nation?—A. I don't recollect that that is the language of the act, but it was practically that the Commission was authorized by Congress to procure and secure all these rolls. I will state, however, that there are undoubtedly a great many memorandums that are still outstanding that were made by people—Choctaw citizens engaged at various times in the preparation of these rolls—that the Commission has never secured, to which no importance has been attached, but simply memoranda made of them."

As a matter of fact, the Commission did not have the original rolls of the Choctaw community as it existed in 1830 and as prepared by the Government officers or of the Chickasaw community existing in 1837 as prepared by the Government officers and did not have any of the early rolls of members of the tribes, but merely such portions of the rolls of the tribes as had been prepared by the tribal authorities themselves during the preceding ten or fifteen years.

Even in cases where the names of claimants (who were of mixed Choctaw or Chickasaw Indian blood) herein appeared on the tribal rolls with the name of the full-blood Indian ancestor the Commission enrolled them as freedmen, which enrollment was approved by the Secretary of the Interior, as in the case of Oliver McCoy. On page 485 of part 1 of the Senate report appears a certified extract from the Choctaw census roll of 1885, showing the enrollment of Susan McCoy and her children by Oliver McCoy, a full-blood Indian, as citizens of the Choctaw Nation. On pages 486, 487, and 488 appear certified copies of the enrollment by the Commission and the approval of the enrollment by the Secretary of the Interior of the children and grandchildren of Oliver McCoy, a full-blood Choctaw, as freedmen of the Choctaw Nation. In this case the records of the nation themselves show that Oliver and Susan McCoy were legally intermarried; that she was his lawful wife, and that the children were the lawful issue of the marriage.

DENIAL OF CLAIMANTS OF THEIR PROPERTY BY COMMISSION ON GROUND THAT PROPER CONSIDERATION OF THEIR CASES WOULD INVOLVE TOO MUCH TROUBLE.

CLAIMANTS WERE DENIED THEIR PROPERTY RIGHTS BY THE COMMISSION, as shown by the official records, for the reason, assigned by the Commission, THAT THE PROPER CONSIDERATION OF THEIR CASES WOULD INVOLVE TOO MUCH WORK. The assignment of this reason by the Commission for its failure to properly consider the cases of claimants called forth the severe strictures contained in the opinion of the Assistant Attorney-General for the Department of the Interior in the case of Loula West and rendered under date of December 8, 1905, and reported in the Laws Affecting the Work of the Five Civilized Tribes, page 156:

"THE PLAINT OF THE COMMISSION SEEMS TO BE, IN SUBSTANCE, WHEN ANALYZED, THAT CONSIDERATION OF THE CASES OF PERSONS CLAIMING RIGHT OF CITIZENSHIP, RESIDENT IN THE NATION AND BORNE ON THE TRIBAL ROLLS, WILL INVOLVE SO MUCH LABOR AND BE SO INCONVENIENT THAT IT PREFERS THEY SHOULD NOT BE HEARD. * * *"

FINAL ROLLS, WHICH ARE BEING USED AS BASIS FOR DISTRIBUTION OF TRUST PROPERTY, SATURATED WITH FRAUD.

Not only are the final rolls made by the Commission, upon which it is proposed to distribute the trust property, notoriously inaccurate and incomplete, but they are saturated with actual and deliberate fraud perpetrated by administrative officers.

At the time the Commission was engaged in the work of preparing these final citizenship rolls there were attorneys representing the tribes, appointed by the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation. These attorneys were employed among other things to defeat the rights of certain persons to enrollment as citizens by blood of the tribes. During the month of June, 1903, an official of the Commission, William O. Beall by name, and who was chief clerk of the Choctaw and Chickasaw enrollment division (see paragraph 2 of his answer under oath, p. 18, Senate Doc. 357, 59th Cong., 2d sess.), was furloughed on the 5th day of June for the remainder of the month, owing to a shortage of funds with which to carry on the work of the Commission. On the 8th day of June he entered the office of Mansfield, McMurray & Cornish, attorneys for the Choctaw and Chickasaw nations, with the knowledge and consent of Clifton R. Breckenridge, a member of the Commission, and there assisted in the preparation of citizenship cases against claimants seeking enrollment as citizens of these tribes. (See paragraph 6, p. 18, Senate Doc. 357.)

On July 1, 1903, he returned to the Commission and resumed his position as chief clerk of the Choctaw and Chickasaw enrollment division. In this position he examined every case passed upon by the law division and instructed the law clerks in many cases upon questions of law, and in many instances directed them to rewrite their decisions, as appears from the testimony of D. C. Lloyd, former chief law clerk, but in 1906 one of the law clerks of the Choctaw and Chickasaw enrollment division. Mr. Lloyd (p. 33, Senate Doc. 357) testified as follows:

"Q. At any time since you have been writing decisions has Mr. Beall overruled any decisions or marked them for change in the law and evidence of the case?—A. I can explain that, I think. I have had charge of that division for some years until lately, and I was there to prepare decisions in all the cases. I would get a bunch of them prepared and bring them in, a basketful at a time, to Mr. Beall. Mr. Beall was the chief clerk of that division and everything had to go through his hands, and he was responsible for these decisions. After they got through my hands then he was responsible. If he didn't agree with me we had a pretty hot argument; sometimes he would convince me that I was wrong, and sometimes it was the other way. Then I would take the decisions back to my room and we would argue some more. Sometimes we would argue the same case fifteen or twenty times." (See also letter to Secretary, S. Doc. No. 357, p. 158.)

Mr. Wirt Franklin, formerly a law clerk of the Choctaw and Chickasaw division, testified under oath as follows before the select committee (p. 346, Senate Report 5013, part 1):

"Mr. BALLINGER. During the time you were with the Commission as attorney did Mr. Beall instruct you as to how you should write up decisions?

"Mr. FRANKLIN. Yes, sir.

"Mr. BALLINGER. Regardless of the law and the evidence?

"Mr. FRANKLIN. Well, I remember one instance which I consider was regardless of the law and the evidence; yes, sir.

"Mr. BALLINGER. State that case.

"Mr. FRANKLIN. It was at the time the Choctaw and Chickasaw citizenship court was in session, and they had before that court the case of Molsey Butler, who was one of those applicants in the cases to which you have referred in your opening statement.

"At the time this decision was rendered by the Choctaw and Chickasaw citizenship court there were a good many cases of a parallel nature that were yet to be decided by the Commission, and I had the reports of those cases on my desk, ready to prepare the decisions in the cases.

"The decision in the Molsey Butler case came out, and my recollection is that Mr. Beall came into the room, where I was sitting at the time at my desk, and laid this opinion of the citizenship court on my desk, with a statement to the effect: 'Here, Franklin, is this Molsey Butler opinion; deny all these niggers, following this opinion.'

"Mr. BALLINGER. Did he say anything to you about denial regardless of the records?

"Mr. FRANKLIN. The statement was, 'Deny all those niggers following the Molsey Butler case,' or words to that effect. I can not be certain of the exact words.

"Mr. BALLINGER. Did you write up any decisions afterwards, submit them to Mr. Beall thereafter, and did he reject them?

"Mr. FRANKLIN. I have written a great many decisions which he has sent back with notice on them how to re-form them."

See also testimony of Charles Von Weise (p. 355, Senate Report 5013, part 1).

From the memorandum slips attached to these opinions and in the handwriting of Mr. Beall we find his instructions, one of them being as follows (p. 5, Foulke Report, Senate Document No. 357):

"Think decision should recite that applicant is the illegitimate child of an intermarried white citizen; that under act of April 26, 1906, she must take the status of the mother and should be refused under act of June 21, 1906."

Here we find a man who was not a lawyer, but a layman, directing law clerks how to prepare legal opinions in the cases of claimants. On page 89 of Senate Document No. 357 Mr. Beall testified as follows:

"Q. Mr. Beall, have you ever been admitted to practice law before any court or commission?—A. No, sir.

"Q. You are a graduate of a law school, are you not?—A. No, sir."

In cases where applications had been made to the Commission by this class of persons as required by law, those applications were not forwarded as a part of the record submitted to the Secretary of the Interior, notwithstanding the fact that the existence of the application was known to Mr. Beall and other employees of the Commission, and the case was decided adversely to the applicant by the Secretary on the sole ground that the record did not disclose an application, as will appear on pages 5, 6, and 7 of the Foulke Report, Senate Document No. 357, to which document attention is directed.

In other cases applications were taken, either deliberately or by criminal carelessness, from the records of the Commission, as appears from the mutilated portions of the record remaining. In some of these cases we find a demurrer filed to an application, the demurrer in existence, the application gone, and the Department holding that although these people are admittedly of Indian blood, that they could not be enrolled because the application was not in existence. (Senate Report No. 5013, pt. 2, p. 361.)

On July 4, 1904, William C. Beall was promoted to the position of secretary to the Commission. (See paragraph 10 of his verified answer on page 19 of Senate Doc. No. 357, 59th Cong., 2d sess.) Although he was no longer directly connected with the Choctaw and Chickasaw division, every decision prepared by the law clerks of that division continued to go to Mr. Beall for his approval before going to the Commissioner, although the decisions from neither the Cherokee, Creek, nor Seminole division went to him for his approval. On page 93 of Senate Document No. 357, Mr. Beall testified as follows:

"Q. Then you are not now nominally in charge of the Choctaw and Chickasaw division?—A. No; I am not. I have no official designation.

"Q. Why is it that Mr. Johnson, as he so testified, still brings the decisions of that division to your desk and those decisions pass through you before they go to the chief law clerk, when they don't in any other division?—A. It is a matter of precedent.

"By Mr. FOULKE:

"Q. You do that still?—A. Yes; I still do it."

We next find William O. Beall, formerly employed by Mansfield, McMurray & Cornish to prepare cases against applicants for enrollment, presiding at hearings had before the Commission in the cases of claimants and quoting provisions of bills pending in Congress and determining their rights thereunder. On page 88 of Senate Document No. 357 Mr. Beall testified under oath as follows with reference to the hearings had in the cases of claimants:

"Q. Now, Mr. Beall, I want to ask you if you have at any time in the hearing of any cases ever quoted a provision from a bill pending in Congress which had not become a law for the purpose of determining the rights of the applicants?—A. Yes, sir.

"Q. Can you state in what case?—A. I couldn't now. In a great number of cases."

William O. Beall, while secretary to the Commission, openly asserted that claimants should not be enrolled if there was any possible way to prevent their enrollment as citizens of the nations. Upon this point Charles Von Weise (Senate Report No. 5013, pt. 1, p. 357) testified as follows:

"Mr. BALLINGER. State to the committee as briefly as you can the conversation you had with Mr. Beall, if you had any, relative to the enrollment of this class of transfer cases at Ardmore more than a year ago.

"Mr. VON WEISE. I think it was along in the fall some time. I can not recall the date of it, but Mr. Beall was down on Commission business at Ardmore, and the conversation came up as to those freedmen transfer cases, and he remarked to me that there was not any need of my wasting my time and money on those cases. I had filed then quite a number of petitions for transfer. They were going to be denied, he said, if there was any power to do it; that this next session of Congress would have a request made to it to eliminate that class of people from ever being enrolled on the blood rolls, because, he stated, they were the descendants of slaves, and the slaves were mere chattels, and he went on giving his reasons. That is the only conversation I ever had with him there, and he has reiterated that here in Muskogee in the presence of Mr. Tom Norman, attorney at Ardmore.

"The CHAIRMAN. Were you present at that time?

"Mr. VON WEISE. Yes, sir; reiterated to me, I mean, in the presence of Mr. Norman, that the decisions of the Attorney-General in those

cases, and in two or three other cases where the Department has overruled the Commission, were absolutely nonsensical; that they were not based upon law or common sense, and especially in these transfer cases; that if there was any power to get around following that, it would be done. Mr. Norman is an attorney and does not represent any freedmen's cases."

On page 96, Senate Document No. 357, upon this point, Beall testified as follows:

"Q. Did you not on that date tell me, when I suggested the reason for wanting to see those records, that these people would never be enrolled as citizens by blood?—A. I don't remember of any such statement. I may have thought so at the time.

"Q. May you not have said that at that time?—A. Not to you.

"Q. Did you to anyone?—A. I may have expressed such an opinion to some employee here in the office; that was my honest conviction that they were not going to be enrolled."

We next find this man Beall deceiving attorneys for claimants by informing them that the records did not disclose the existence of applications, when, as a matter of fact, the records did disclose the existence of the applications, as in the case of Prince Butler, which appears on page 385, part 1, of Senate Report No. 5013; also in the case of Bettie Ligon, a citizen by blood of the Chickasaw Nation. On July 3, 1905, the Commissioner wrote Albert J. Lee, attorney for Bettie Ligon, in part as follows:

"In reply to your letter, you are advised that it does not appear from the records of this office that application has been made to the Commission to the Five Civilized Tribes for the enrollment of Bettie Ligon as a citizen by blood of the Choctaw or Chickasaw Nation."

On June 9, 1906, the Commissioner rendered an opinion which appears on pages 489 and 490 of Senate Report 5013, part 1, in which opinion the Commissioner says:

"The records of this office show that on September 9, 1896, original application was made to the Commission to the Five Civilized Tribes for the enrollment of Bettie Ligon, etc., as citizens of the Chickasaw Nation."

If these were the only cases in which these errors occurred, the moral turpitude of this official would not be so censurable, but dozens of similar cases appear of record, and doubtless thousands more exist.

In order to prevent claimants or their attorneys from ascertaining what the records disclosed in these cases, Commissioner Bixby and Secretary Beall at first refused attorneys permission to inspect the records. It was not until the Secretary of the Interior directed them, as appears from the correspondence on pages 373, 374, 375, and 376 of the Senate report, to accord this right to the claimants herein that attorneys for claimants were permitted to inspect the records, and the inspection of the records under departmental orders disclosed false statements contained in the letters prepared by William O. Beall and signed by the Commissioner and the decisions of these cases prepared by William O. Beall and approved by the Commissioner.

In the absence of the Commissioner, Beall was acting Commissioner, and as such directed the business of the office. On page 513 of Senate Report No. 5013, part 1, Fifty-ninth Congress, second session, Mr. Bixby testified as follows with reference to Beall: "I can't tell you; in a general way he runs the office."

Thus we find this man Beall, while constructively in the employ of the Commission, actually in the employ of the attorneys for these nations, assisting in the preparation of cases to defeat the rights of persons entitled to enrollment as citizens of the nations. (See Senate Doc. 357, p. 13, 59th Cong., 2d sess.)

We then find him the following month back at work with the Commission, but at all times loyal to his former employers, ever ready to do their bidding; suppressing applications in cases so as to defeat the rights of persons to enrollment as citizens of the tribes; sending false and misleading statements to their attorneys, and embodying false statements in the decisions, later pro forma approved by the Commissioner; seeking to prevent attorneys for claimants from inspecting the record in their cases, in order that his false statements might not be discovered; instructing law clerks to decide cases against claimants, quoting at hearings in these cases provisions of bills pending in Congress and determining the rights of claimants herein thereunder; announcing months in advance with remarkable accuracy that Congress would enact a law excluding claimants from enrollment as citizens of the tribes; assisting later in the preparation of a draft of a bill to be introduced in Congress to defeat the rights of claimants; informing attorneys employed by claimants to represent them that they were wasting their time, as claimants would not be enrolled if there was any way by which the Commission could prevent it.

It appears from the testimony of the member of the Commission who gave Mr. Beall authority to accept employment from this firm of attorneys that the Commission considered the duties of the attorneys for the nations and the duties of the Commission practically identical—one charged by law to see that every person entitled to enrollment as a member of the tribes was enrolled, the other employed by the nations to defeat the rights of persons whom the officials of those tribes did not believe were entitled to enrollment. Yet the duties of the Commission and the attorneys, in the language of Clifton R. Breckenridge, a member of the Commission, were practically identical. In explaining why he gave his consent to Beall's employment by Mansfield, McMurray & Cornish, he said (p. 21, Senate Doc. 357, 59th Cong., 2d sess.):

"A. I considered it proper because, in the first place, the labors of the Commission and the labors of the counsel for the Choctaw and Chickasaw nations were practically identical in character."

These decisions, thus prepared under the direction of Beall, went to Commissioner Bixby for his approval. On page 504 of part 1, Senate Report 5013, Mr. Bixby testified under oath as follows:

"Commissioner BIXBY. Yes; I finally decided, always. The Acting Commissioner never decided a case, to my knowledge.

"Mr. BALLINGER. Did you examine the records in these cases——

"Mr. ROGERS. I object to that question. Mr. Bixby signs these decisions, and they are his decisions.

"The CHAIRMAN. He may ask the question.

"Commissioner BIXBY. I attempt to. Of course, it is a pretty big task. I sit up nights trying to do it and work practically sixteen to eighteen hours a day trying to do it, but of course I depend largely on my legal department. I do not claim to be a lawyer, of course, but I do the best I can.

"Mr. BALLINGER. Do you intend that the committee shall understand that in all citizenship cases decided by your Commission and over your name you have examined the records in those cases?

"Commissioner BIXBY. No, sir; I do not pretend that I have examined every part of the record. In some cases I do. I have read a great many cases, every word of them, but I do not read all the testimony in every case. I admit that. It would be an absolute physical impossibility."

But few, if any, decisions in the class of cases of claimants of mixed Choctaw or Chickasaw Indian and negro blood were handed down by the Commissioner under the departmental decisions in the test case of Joe and Dillard Perry, rendered December 8, 1905, and reported in the Laws Affecting the Work of the Five Civilized Tribes, page 158, by which decision the Assistant Attorney-General directed the enrollment of all persons of mixed Choctaw or Chickasaw Indian and negro blood, all decisions being held back until after the passage of the Five Civilized Tribes bill, which contained a provision inserted, as Mr. Bixby testifies (Senate Rept. No. 5013, pt. 1, 59th Cong., 2d sess., p. 503) at his instigation, and was prepared by Beall, which was as follows:

SECTION 4 OF THE ACT APPROVED APRIL 26, 1906.

"That no name shall be transferred from the approved freedmen, or any other approved rolls of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, respectively, to the roll of citizens by blood unless the records in charge of the Commissioner to the Five Civilized Tribes show that application for enrollment as a citizen by blood was made within the time prescribed by law by or for the party seeking the transfer, and said records shall be conclusive evidence as to the fact of such application, unless it be shown by documentary evidence that the Commissioner to the Five Civilized Tribes actually received such application within the time prescribed by law.

(The last provision, relating to documentary evidence, was inserted by the Senate Indian Committee at the instance of counsel for claimants, who protested to the committee against the enactment of this legislation.)

Thus fulfilling the prediction made by William O. Beall to Charles Von Weise and others, and as appears from the testimony of Commissioner Bixby on page 503 of part 1 of Senate Report No. 5013, Fifty-ninth Congress, second session, wherein Mr. Bixby, under oath, testified as follows:

"Mr. BALLINGER. Did you decide a single case between November 11, 1905, and the date of the approval of the Five Civilized Tribes bill?

"Commissioner BIXBY. I did not have time."

SECRETARY GAVE NO CONSIDERATION TO CASES ON REVIEW.

The great majority of these decisions did not reach the Department until during the months of October, November, and December. The action theretofore taken on them by the Commission was merely clerical. The official action to be taken thereon was by the Secretary of the Interior, for, by a provision of the Indian appropriation bill approved March 3, 1905, all the work of the Commission, and the powers theretofore exercised by the Commission, were conferred upon the Secretary of the Interior after the 1st day of July, 1905.

Did the Secretary of the Interior consider these cases so as to intelligently pass upon them and see that the rolls were made as provided by law? In an official communication to the United States Senate, under date of March 4, 1907, and printed as Senate Document No. 390, Fifty-ninth Congress, second session, Acting Secretary of the Interior Thomas Ryan says:

DEPARTMENT OF THE INTERIOR,
Washington, March 4, 1907.

SIR: In further response to the Senate resolution dated February 28, 1907, relative to the number of Indians and freedmen enrollment cases pending before the Commissioner to the Five Civilized Tribes on February 25, 1907, also in the office of the Commissioner of Indian Affairs on review and before the Department, I have the honor to advise you that since my report of the 2d instant the Department has received, on March 2, 168 cases; March 4, 141 cases, making a total of 501 cases, aggregating 1,549 cases received by the Secretary since February 25, 1907, and making a total of 2,023 cases for examination and decision after February 25 and on or before March 4, 1907.

Respectfully,

THOS. RYAN, *Acting Secretary.*

The PRESIDENT OF THE SENATE.

Here we find the Secretary of the Interior, in seven days, passing upon 2,023 cases, which involved the rights of 10,000 persons. The records in a majority of these cases were voluminous. They were not even examined by the Secretary, or by any official of his Department. No pretense was made of examination. Employees of the Department took the cases and dictated a mere statement affirming the decision of the Commission, and the decisions were then stamped by messengers with rubber stamps "affirmed."

In cases where claimants had duly and regularly filed written applications, and the applications were on file with the Commission, the petitions for the transfer of the names of certain of the claimants herein were denied by the Commission and the Secretary, notwithstanding the proof of their Indian blood and descent was conclusively shown by the record in the case. This can not be denied by either the attorneys for the Government or for the nations. It is conclusively shown by Senate Report No. 5013, part 2, Fifty-ninth Congress, second session, in the case of Bettie Ligon and her children; also in the case of Prince Butler, and likewise in the case of Callie Newberry.

But section 4 of the act approved April 26, 1906, did not prevent the correct enrollment of certain claimants herein who had complied with the terms and provisions of the laws under which they were before the Commission, had it been correctly construed.

PROPER CONSTRUCTION OF SECTION 4.

The first act of Congress authorizing the Commission to prepare "rolls of citizenship" of the Choctaw and Chickasaw tribes was the act of June 10, 1896. That act required every person applying for enrollment to submit an application, in which he was required to assert his claim as a citizen or as a freedman. The act of May 31, 1900, likewise required the submission of an application, as did also the act of July 1, 1902. But the act of June 28, 1898, under which the great majority of claimants were before the Commission, did not authorize or require them to assert a right to any particular kind of enrollment. Claimants were directed to appear before the Commission, at such times and places as the Commission might direct, for examination by the Commission, and, after such examination, the duty devolved wholly upon the Commission of correctly enrolling them in accordance with the terms and provisions of the statute, subject to the approval of the Secretary of the Interior. The statute prescribed the qualifications for enrollment as citizens to be:

1. A right under existing law, which was a right under the treaties of 1830 with the Choctaws and 1837 with the Chickasaws.

2. That he or she be of Choctaw or Chickasaw blood, and resident of the nation, which latter provision was void, as heretofore pointed out.

Thus the appearance of claimants before the Commission under the act of 1898 operated as an application for enrollment as citizens of blood, provided only they were of Choctaw or Chickasaw Indian blood, or were otherwise entitled under the treaties and laws of the United States to participate in the distribution of the property.

In construing this section we must look to previous enactments and ascertain the intention of Congress with reference to the enrollment of claimants. It must be presumed that Congress in ratifying the agreements and enacting the laws referred to knew of the nature of appellants' title, and that it did not intend to interfere therewith, even though it possessed the power, which it did not. In the case of United States *v.* Heth (3 Cranch, p. 409, 2 L. ed., p. 482) the court said:

"Where it can be shown that the Government has once adopted a certain rule of justice for its conduct, it is fair to infer that in legislating afterwards upon the same subject it intended to pursue the same rule, unless the contrary shall be clearly expressed."

In the case of United States *v.* Central Pacific Railroad Company (118 U. S., p. 241, 30 L. ed., p. 175) the court said:

"There is another view in this controversy which seems to us conclusive. As the contract between the United States and the railroad company contained in the acts of July 1, 1852, and of July 2, 1864, has been interpreted by this court to authorize the retention by the Government of compensation for services only on those roads which the United States aided in building, the CONSTRUCTION which the appellant seeks to put on the second section of the act of May 8, 1878, WOULD NOT ONLY RENDER THAT SECTION A BREACH OF FAITH ON THE PART OF THE UNITED STATES, BUT AN INVASION OF THE CONSTITUTIONAL RIGHTS OF THE APPELLEE. WE ARE BOUND, IF POSSIBLE, SO TO CONSTRUE THE LAW AS TO LAY IT OPEN TO NEITHER OF THESE OBJECTIONS. (Broughton *v.* Pensacola, 93 U. S., 266, 23 L. ed., 896; Red Rock *v.* Henry, 106 U. S., 596, 27 L. ed., 251; Hobbs *v.* McLean, 29 L. ed., 940, decided at the present term and cases were cited; United States *v.* Cooms, 12 Pet., 72; 37 U. S., bk. 9, L. ed., 1004.) THE CONSTRUCTION CONTENDED FOR BY THE APPELLEE PRESERVES THE GOOD FAITH OF THE GOVERNMENT AND FREES THE ACT FROM THE IMPUTATION OF IMPAIRING RIGHTS SECURED BY THE CONSTITUTION OF THE UNITED STATES."

MERE APPEARANCE OF PERSON BEFORE COMMISSION UNDER ACT OF 1898 OPERATED AS APPLICATION FOR ENROLLMENT AS BLOOD CITIZEN, PROVIDED ONLY HE OR SHE WAS OF INDIAN BLOOD.

Did not Congress intend that the appearance of all persons before the Commission in 1898 should operate as an application for their correct enrollment either as blood citizens or as freedmen? Such was unquestionably the intention of Congress when it enacted the law of 1898, and the appearance of the person before the Commission under that law must necessarily be construed as an application for correct enrollment under section 4 of the act approved April 26, 1906. If Congress did not intend that the appearance of a person before the Commission under the act of 1898 should operate as an application for such enrollment as the person thus appearing was entitled to, then every person who appeared before the Commission under the act of 1898, although he be a full-blood Indian, was barred from enrollment as a citizen by blood, for, by section 34 of the supplemental agreement, approved July 1, 1902, it was provided that "the application of no person whomsoever for enrollment shall be received after the expiration" of ninety days after the ratification of this agreement. The agreement was ratified on September 25, 1902, and the ninety-day limit expired on December 24, 1902. As no person who was before the Commission under the act of 1898 subsequently made an application to the Commission, under a law requiring the submission of an application for enrollment as a citizen, they would all be barred under that act from enrollment, if it should be held that their mere appearance under the act of 1898 before the Commission did not operate as an application for their correct enrollment.

SECRETARY OF THE INTERIOR AND COMMISSIONER OF INDIAN AFFAIRS EQUALLY RESPONSIBLE.

As a result of this confusion of statutory enactments opinions were rendered by the Indian Territory division of the office of the Secretary of the Interior, and approved by the Secretary; by the Office of the Commissioner of Indian Affairs, and approved by the Commissioner and by the Secretary of the Interior, which, if it were not for the frightful consequences resulting from those decisions in the denial to persons of their property rights in this trust property, would have been grotesque. Every technicality and subterfuge known to the officers of this Department was employed by the offices of the Secretary of the Interior, the Commissioner of Indian Affairs, and the Commissioner to the Five Civilized Tribes, to defeat claimants of their legal property rights. As an illustration:

The Assistant Attorney-General for the Department of the Interior, whose office has been the one haven of refuge for claimants, and who have uniformly secured a reasonable adjudication of their rights when the Secretary of the Interior was gracious enough to permit them to have their cases referred to that office for a legal opinion, rendered a line of legal opinions, which were approved by the Secretary of the Interior, and thereby became the laws of the Department in the adjudication of the cases of claimants. These laws left no room to the administrative officers to deny the rights of claimants in thousands of cases where they were subsequently denied. In order to circumvent these decisions an opinion was prepared by an employee of the legal department of the Indian Office, who was insane at the time he wrote the opinion, and who was, within a few days thereafter, adjudged by the supreme court of the District of Columbia to be insane, and by its decree incarcerated in St. Elizabeth's Insane Asylum across the river, and who subsequently died in the insane asylum. This decision, prepared by this lunatic, was written in a case arising from the Cherokee Nation, where different laws governed the enrollment of applicants. This lunatic decided questions not in the records of that case and not before the Department for determination. This decision, rendered by this lunatic, was pro forma affirmed by the Commissioner of Indian Affairs, and thereafter pro forma affirmed by the Secretary of the Interior. Immediately upon the affirmation of this decision by the Secretary the officers of the Indian Territory division of the Secretary's Office, the officers of the Indian Bureau, and the officers of the Commissioner to the Five Civilized Tribes seized upon this decision in order to circumvent the decisions rendered by the legal department. In practically every decision, denying the rights of claimants rendered by the Commissioner to the Five Civilized Tribes, the Commissioner of Indian Affairs, and the Secretary of the Interior, from that day until the jurisdiction of all these officers ceased and terminated on the 4th day of March, 1907, by operation of law, the decision of this lunatic was invoked and referred to in the decision rendered in the case as "Departmental letter of May 25, 1906, I. T. D., 9114–1906."

This decision was written by a lunatic and initialed by him; his initials appearing upon the original decision as M. M. M., and if any person desires to inform himself as to the accuracy of this statement he can easily ascertain who Mr. M. M. M. was by examining the records of the supreme court of the District of Columbia and the records of St. Elizabeth's Insane Asylum; and the decisions rendered in all these cases in which reference is made to the above initials and above decision rendered May 25, 1906.

This decision rendered in the case of a Cherokee claimant, where different laws governed the adjudication of rights, was rigidly adhered to in the adjudication of cases of claimants who asserted their rights to share in the common trust property of the Choctaws and Chickasaws. Counsel for claimants submit that this smacked of criminality, PARTICULARLY AS THE DEPARTMENT CONTINUED TO ADJUDICATE CASES UNDER THIS DECISION AFTER THE TRUE FACTS BECAME KNOWN TO THE OFFICERS OF THAT DEPARTMENT.

Nor can the office of the Secretary of the Interior nor office of the Commissioner of Indian Affairs shift the responsibility of the failure to correctly enroll claimants upon the Commissioner to the Five Civilized Tribes. The Commissioner of Indian Affairs had in his office the official rolls prepared by officers of the United States of the Choctaw and Chickasaw Indians from 1830 to 1860. These rolls were authentic and reliable rolls and contained the names of practically every one of the claimants or the names of their ancestors.

Under the act of Congress of 1898, as construed and defined by Assistant Attorney-General Willis J. Van Devanter in his opinion rendered under date of March 17, 1899, and approved by the Secretary on March 17, 1899, and under the act approved July 1, 1902, every person whose name rightfully appeared upon any tribal roll of any tribe, together with his or her descendants, was entitled to enrollment. Neither the Indian Office nor the Secretary's office pretended to examine the official rolls locked up in a room in the office of the Commissioner of Indian Affairs to ascertain whether names of claimants, whose rights they were denying, appeared upon those rolls, or whether the names of their ancestors appeared upon any of those rolls. Nor did these officers of the Government call upon the Secretary of the Treasury for the fifty or seventy-five official rolls of these people which were in his Department, and examine those rolls to see whether or not the names of claimants, or their ancestors, appeared thereon. It has only been within the last three weeks that the Commissioner of Indian Affairs has had sorted out, and put together, the official rolls of these people, WHICH HAVE BEEN LYING IN A ROOM IN HIS BUREAU SINCE THE YEAR 1844.

Notwithstanding these facts are well known to these officers, which alone prove conclusively that the final rolls of these people as made by the Department are not correct, the officers of this Department are inflexibly and implacably opposing any legislation that will give to rightful claimants their property and are likewise opposing the enactment of any legislation that will strike from the rolls, saturated with fraud as they are, the names of thousands of persons who have no legal right thereon. AND ALL THIS IS BEING DONE IN THE NAME OF THE MIGHTY GOVERNMENT OF THE UNITED STATES AND IN THE SO-CALLED CAUSE OF JUSTICE.

CLAIMANTS DEPRIVED OF THEIR RIGHTS THROUGH BRIBERY OF GOVERNMENT OFFICIALS.

Probably the most glaring frauds perpetrated on any class of claimants by administrative officers occurred in the jurisdiction of the claims of that class of claimants known to the Department as "court-judgment citizens." The act of June 10, 1896, provided that if either the claimant or the Indian governments were aggrieved at the decision of the Commission in the case of any claimant to enrollment as a member of the Choctaw or Chickasaw tribes an appeal could be taken to the United States district courts in Indian Territory. The act prescribed the manner in which appeal should be taken. Appeals were taken from the decisions of the Commission to the United States district courts in the Choctaw and Chickasaw nations in cases involving the rights of more than 5,000 claimants.

Judgments were rendered, after full hearings and after claimants and witnesses had been examined and cross-examined by counsel in open court, decreeing more than 4,000 of these claimants to be citizens of the Choctaw and Chickasaw nations. The decrees were duly certified to the Commission to the Five Civilized Tribes. An appeal was subsequently taken to the Supreme Court of the United States in the case of Stephens *v.* Cherokee Nation (174 U. S., 488; 43 L. ed., 1056), which court held the act to be constitutional and the judgments to be final.

Thereafter it was alleged by the nations that many persons had been enrolled by judgments of the United States district courts, which judgments had been affirmed by the Supreme Court of the United States in the test case of Stephens *v.* Cherokee Nation (174 U. S., p. 488) who were not entitled to enrollment, and that the United States district courts and the Supreme Court of the United States had erred in their holdings of law and that the district courts did not possess the power to try the cases de novo, but that their jurisdiction extended only to a review of the action of the Commission to the Five Civilized Tribes. Accordingly, Congress inserted in the supplemental agreement with the Choctaws and Chickasaws, approved July 1, 1902 (32 Stat. L., 641), a provision creating a legislative commission, consisting of three members, to be appointed by the President and confirmed by the Senate of the United States, and which commission was designated in the agreement as the "Choctaw-Chickasaw citizenship court." It was provided that the Choctaw and Chickasaw nations, acting jointly or separately, could, within ninety days after the approval of the agreement, file a petition in equity in the Choctaw-Chickasaw citizenship court, citing ten representative persons, admitted to citizenship by the United States district courts, to appear before that court and show cause why the judgments of the United States district courts and affirmed by the Supreme Court of the United States rendered in their cases should not be annulled.

It was expressly provided that the jurisdiction of this unique legislative commission, known as the "Choctaw-Chickasaw citizenship court," should be confined exclusively to two questions:

1. Did the United States courts in the Indian Territory, acting under the act of Congress approved June 10, 1896, admit persons to citizenship, and to enrollment as such citizens, in the Choctaw and Chickasaw nations, respectively, without notice of the proceedings in such courts being given to each of said nations?

2. Whether the proceedings in the United States courts in Indian Territory, under the act of June 10, 1896, should have been confined to a review of the action of the Commission to the Five Civilized Tribes upon the papers and evidence submitted to such Commission and should not have extended to trial de novo of the question of citizenship.

It was further provided that if this legislative Commission held the judgments of the district courts to be void on either of these grounds, said decree should operate to vacate and annul all judgments procured in the United States district courts.

This legislative Commission rendered an opinion holding the judgments of the United States district courts, which judgments had been affirmed by the Supreme Court of the United States, void upon the two grounds:

1. That proper notice of proceedings in the district courts had not been served upon both the Choctaw and Chickasaw nations.

2. That said United States district courts should have been confined to merely a review of the action of the Commission and should not have extended to trial de novo.

Thus every judgment rendered by the United States district courts after a full, free, and impartial hearing, and which judgments were affirmed by the Supreme Court of the United States, were vacated and annulled.

The act then provided:

"In the event said citizenship judgments or decisions are annulled or vacated in the test suit hereinbefore authorized, because of either or both of the irregularities claimed and insisted upon by said nations as aforesaid, then the files, papers, and proceedings in any citizenship case in which the judgment or decision is so annulled or vacated, shall, upon written application therefor, made within ninety days thereafter by any party thereto, who is thus deprived of a favorable judgment upon his claimed citizenship, to be transferred and certified to said citizenship court by the court having custody and control of such files, papers, and proceedings, and, upon the filing in such citizenship court of files, papers, and proceedings in any such citizenship case, accompanied by due proof that notice in writing of the transfer and certification thereof had been given to the chief executive officer of each of said nations, said citizenship case shall be docketed in said citizenship court, and such further proceedings shall be had therein in that court as ought to have been had in the court to which the same was taken on appeal from the Commission to the Five Civilized Tribes, and as if no judgment or decision had been rendered therein."

This legislative court proceeded to determine the rights of all these claimants, and by decree entered in the month of December, 1905, struck down practically every claimant whose case had gone before that LEGISLATIVE COURT, thus reversing practically all the judgments entered by the United States district courts and affirmed by the Supreme Court of the United States in these cases.

The great majority of persons thus deprived of their rights were admittedly of Choctaw or Chickasaw Indian blood and descent, and had A VESTED RIGHT IN THE TRIBAL PROPERTY UNDER THE TREATY OF 1830 AND THE GRANT MADE TO THE CHOCTAW NATION IN 1842, IN TRUST FOR THOSE PERSONS WHO COMPRISES THE CHOCTAW COMMUNITY IN 1830 AND THEIR DESCENDANTS.

As a reward for the superior legal services rendered in these cases, this famous legislative commission awarded a fee of $750,000 which was paid to the firm of Mansfield, McMurray & Cornish, attorneys at law, of McAlester, Ind. T., out of the TRUST FUNDS OF THE CHOCTAWS AND CHICKASAWS, AND IN WHICH FUNDS THE PERSONS THUS DISPOSSESSED OF THEIR PROPERTY HAD A VESTED RIGHT UNDER THE TREATIES.

It is alleged that the members of that court were bribed and received as a consideration for their decisions a part of the fee paid these attorneys. Counsel for claimants are reliably informed that the Secretary of the Interior NOW HAS IN HIS POSSESSION POSITIVE PROOF OF THE BRIBERY OF CERTAIN MEMBERS OF THAT COURT, SAID PROOF SETTING FORTH THE AMOUNT PAID CERTAIN MEMBERS OF THAT COURT, THE TIME AND PLACE THE PAYMENTS WERE MADE, AND THE MANNER OF THE PAYMENTS. This evidence has been in the possession of the Secretary of the Interior for more than three months and yet no investigation, so far as counsel for claimants have been able to ascertain, HAS BEEN INAUGURATED AND NO PROCEEDINGS HAVE BEEN INSTITUTED CALCULATED TO BRING THESE GUILTY PERSONS BEFORE THE BAR OF JUSTICE, ALTHOUGH THE TIME IN WHICH THEY CAN BE CRIMINALLY PROSECUTED IS RAPIDLY EXPIRING.

The members of this firm of attorneys, George Mansfield, J. F. McMurray, and Melvin Cornish, were, on the 2d day of November, 1902, indicted by a Federal grand jury, sitting at the city of Ardmore, Ind. T., for the crime of conspiracy to defraud the Chickasaw Nation out of the sum of $28,876.90, certified copy of which indictment is hereto attached.

UNITED STATES OF AMERICA,
Indian Territory, Southern District, ss:

In the United States court for the southern district of the Indian Teritory, sitting at Ardmore, for the May term, 1905. United States *v.* D. H. Johnston, P. S. Mosely, George Mansfield, J. F. McMurray, and Melvin Cornish, defendants. Indictment for conspiracy.

The grand jurors of the United States of America, duly selected, summoned, impaneled, sworn, and charged to inquire within and for the body of the southern district of the Indian Territory, in the name and by the authority of the United States of America, upon their oaths do find, present, and charge, that one D. H. Johnston, one P. S. Mosely, one George Mansfield, one J. F. McMurray, and one Melvin Cornish, and others to the grand jury unknown, on the 2d day of November, A. D. 1902, within the southern district of the Indian Territory did unlawfully and feloniously commit the crime of conspiracy to commit an offense against the United States by defrauding the Chickasaw Nation, committed as follows:

That during all these times herein mentioned the said P. S. Mosely was governor of the Chickasaw Nation, except from September, 1904, when the said D. H. Johnston was governor of the Chickasaw Nation, and during all of these times the said George Mansfield, J. F. McMurray, and Melvin Cornish were each citizens of the United States and not members of any Indian tribe or nation, and were associated together as a firm of attorneys under the name and style of Mansfield, McMurray & Cornish.

That the said Chickasaw Nation was at all times herein mentioned composed of the Chickasaw tribe of Indians, and duly authorized and recognized by the laws of the United States as a political dependency and government, under the name of the Chickasaw Nation, having a governor, auditor public accounts, national treasurer, and legislature. That to the said Chickasaw Nation there belonged in the Treasury of the United States large sums of money known as trust and invested funds, coal and asphaltum royalty funds, and funds derived from the sale of lots in town sites.

That at the time and place aforesaid, and at all times herein mentioned, the said D. H. Johnston, P. S. Mosely, George Mansfield, J. F. McMurray, and Melvin Cornish, and others to the grand jury unknown, did falsely, feloniously, unlawfully and wickedly conspire, combine, confederate, and agree together among themselves to defraud the Chickasaw Nation out of large and divers sums of money in the Treasury of the United States belonging to the said Chickasaw Nation.

That in pursuance to and to effect the object of said conspiracy, combination, confederacy, and agreement, said P. S. Mosely, as governor of the Chickasaw Nation, caused the auditor public accounts, without authority of law, to issue at divers times certain warrants upon the national treasurer of the Chickasaw Nation, payable to said Mansfield, McMurray, and Cornish, at such times and in amounts as follows:

No.	Date.	Amount.
801	November 2, 1902	$2,700.00
802	November 26, 1902	2,500.00
803	November 8, 1902	2,500.00
804	November 12, 1902	1,000.00
805	November 12, 1902	250.00
806	November 12, 1902	100.00
807	November 12, 1902	515.00
943	April 16, 1903	396.05
944	April 16, 1903	1,628.75
945	April 16, 1903	385.75
1475	February 3, 1904	2,000.00
1477	February 3, 1904	1,333.00
1478	February 3, 1904	1,667.00
1479	February 3, 1904	1,641.95
1480	February 3, 1904	1,000.00
1485	February 3, 1904	2,700.00
2235	July 28, 1904	3,879.45
2237	July 28, 1904	2,700.00
	Total	28,876.90

That in pursuance to and to effect the object of said conspiracy, combination, confederacy, and agreement, said D. H. Johnston on the 14th day of February, 1905, within the district and territory aforesaid, without authority of law, caused the auditor public accounts to issue a certain warrant upon the national treasurer of the Chickasaw Nation, payable to the said Mansfield, McMurray, and Cornish, numbered 112, for the sum of $2,500.

That each of said warrants hereinbefore named were issued upon a false, fictitious, and pretended claim that the amounts therein named were for actual expenses of the said Mansfield, McMurray, and Cornish while engaged as attorneys for the Chickasaw Nation.

That in pursuance of and to effect the object of said conspiracy, combination, confederacy, and agrement, said D. H. Johnston, P. S. Mosely, George Mansfield, J. F. McMurray, and Melvin Cornish, and each of them did present said false and fraudulent warrants, well knowing that they were false and fraudulent, to the national treasurer of the Chickasaw Nation, and caused the same to be paid by the said national treasurer out of the trust funds of the said Chickasaw Nation then in the subtreasury of the United States at St. Louis, Mo.; that at the time such moneys were paid said D. H. Johnston, P. S. Mosely, George Mansfield, J. F. McMurray, and Melvin Cornish, and each of them well knew they were not lawfully entitled to said money, and well knew that said items of expenses were fictitious and fraudulent, and well knew that no itemized statement of expenses, as required by law, was ever presented, allowed or approved, and well knew that said money was obtained without consideration and without any authority of law, but falsely, fraudulently, feloniously, unlawfully and wickedly did then and thereby contrive and intend to cheat and defraud the Chickasaw Nation out of said moneys, to wit, the sum of $31,376.90; and did then and thereby cheat and defraud the said Chickasaw Nation out of the moneys aforesaid; and did embezzle and convert to their own use the aforesaid moneys, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

W. B. JOHNSON,
United States Attorney.

INDIAN TERRITORY, *Southern District.*

I, C. M. Campbell, clerk of the United States court for the southern district, Indian Territory, do hereby certify that the above and foregoing is a true and perfect copy of the indictment in said cause as same appears of record in my office at Ardmore.

In testimony whereof witness my hand and seal of office this 25th day of October, 1905.

[SEAL.]

C. M. CAMPBELL, *Clerk.*
By W. S. CROCKETT, *Deputy.*

When this indictment was returned, the United States marshal for the southern district of the Indian Territory wired to the Department of Justice requesting that some of the accused persons, who were then in Washington, D. C., be taken into custody. That night men high in official position interceded with the Department of Justice and stopped the apprehension of these men in the ordinary course of legal procedure. They were not arrested, although for forty-eight hours they were shadowed by detectives who occupied adjoining rooms to them in the hotels of this city. They were permitted by the Department of Justice, at their own pleasure, to appear before the United States district court at Ardmore, Ind T., and give bond for their appearance at such time as the court might thereafter require. That was their first and last appearance before a court in connection with this proceeding. WHY THE INTERPOSITION OF POWERFUL INFLUENCE TO PROTECT THESE MEN FROM THE PROCESS OF LAW? WHY THIS EXTRAORDINARY EXTENSION OF COURTESY BY THE DEPARTMENT OF JUSTICE?

INDICTMENT DISMISSED BY ORDER OF ATTORNEY-GENERAL OF THE UNITED STATES.

Notwithstanding that this indictment was returned more than five years ago, these defendants were never tried, and because a United States district attorney, W. B. Johnson by name, refused to comply with the instructions of the Attorney-General of the United States and dismiss this indictment against these men he was summarily removed from office, and on the 15th day of November, 1907, by order of the Attorney-General of the United States, these cases were dismissed in order to prevent them from passing to the State courts, where these persons would have been tried and punished.

Since the first attempt on the part of the Attorney-General of the United States to compel the legal officer of his Department—charged by law with the duty of enforcing the laws of the United States in the southern district of the Indian Territory—to dismiss this indictment, and thereby effectually preclude the possibility of these men being punished, the finger of suspicion has irresistibly pointed to that Department of the Government. It is likewise pointing strongly to the men in public life who have made meteoric pilgrimages to the Department and importuned high Federal officers to direct the dismissal of this indictment. IS IT CONCEIVABLE THAT ANY OF THESE OFFICERS OF THE DEPARTMENT SECURED A PORTION OF THIS GREAT FEE OF $750,000 FOR THEIR SERVICES IN SHIELDING AND PROTECTING THESE MEN?

It is unnecessary to argue here the question of the guilt or innocence of these men. It is sufficient to say that if they had been innocent of the crime charged they would have exhausted every remedy within their power to have secured an early and speedy trial before a jury composed of their peers and neighbors.

This blot upon the integrity of high Federal officials can not be wiped out by any mere assertion that the indictments were not well founded, or that there was not sufficient proof to sustain the indictments. THESE WERE QUESTIONS FOR A COURT AND A JURY TO DETERMINE AND NOT FOR THE OFFICERS OF THE DEPARTMENT OF JUSTICE.

Somewhere behind the scenes and in the dark recesses of the Federal mechanism there was a conspiracy concocted to protect these men, and that conspiracy, concocted in the dark, was carried through to successful fruition by departmental agency and secrecy.

And why the dismissal of these indictments on the last day of the existence of the Territorial courts? The telegram from the Attorney-General to the United States district attorney, which was seen by counsel for these claimants, directed the United States district attorney to—

"Be sure and see that the indictments against Mansfield, McMurray, and Cornish are dismissed before the Territorial courts pass out of existence and the new State courts come into being."

If any Member of the Senate or House questions this assertion, or the action of the Department as hereinbefore outlined, let him call for all the correspondence, including the report of the special agent of the Department upon which these indictments were returned, the instructions of the Attorney-General transmitted to the United States district attorney in this case, and he will then learn from the official records of the accuracy of these statements.

This is a matter that should demand a full and complete investigation at the hands of Congress. If these statements are correct the guilty parties, WHETHER THEY BE THE ATTORNEY-GENERAL OF THE UNITED STATES OR HIS SUBORDINATES, SHOULD BE ARRAIGNED BEFORE THE BAR OF JUSTICE, EITHER IN A CRIMINAL COURT OR BEFORE THE BAR OF THE SENATE OF THE UNITED STATES IN IMPEACHMENT PROCEEDINGS.

This is supposed to be an Administration under which the "square-deal" ideal prevails. If this is a "square-deal" Administration, if Congress is imbued with the rudimentary principles of a "square deal" and common honesty in the administration of a trust which it has assumed, then let these principles of a "square deal" be applied to all persons alike, THOSE HOLDING HIGH OFFICIAL POSITION AS WELL AS THOSE IN THE LOWLY WALKS OF LIFE.

In the eastern district of Oklahoma as a result of these manipulations the words "Federal administration" and "Federal justice" are looked upon as mere shallow, hollow mockery, and as synonymous and interchangeable terms with "robbery," "pillage," and "theft" committed in the name of the Government of the United States and under the guise of Federal administrative authority.

DECEPTION PRACTICED ON CLAIMANTS.

Another evidence of the fraud practiced by the Indian officials and their attorneys, in order to defeat the rights of claimants, is found in the following notice which was sent out broadcast to claimants. Appointments had been made in the Choctaw and Chickasaw nations for the examination of these people. Receiving the following notice from the attorneys of the nations they did not appear at the appointed places, as they so advise counsel, and in many instances judgments by default were entered by reason of their failure to so appear, and it was held by the Commission that their claims were therefore barred by their failure to appear at the appointed places and times:

SOUTH MCALESTER, IND. T.,
November 10, 1900.

———— ————, *Durant, Ind. T.:*

You are hereby advised, in compliance with the direction of the Commission to the Five Civilized Tribes that the Choctaw and Chickasaw nations object to your enrollment upon the ground: No right to enrollment.

You are further advised that no testimony on behalf of the Choctaw and Chickasaw nations will be taken at the appointment of the Commission to the Five Civilized Tribes at Atoka, Ind. T., beginning December 3, 1900; and that it will not be necessary for you to appear at that time and place, unless you desire to do so in your own behalf.

THE CHOCTAW AND CHICKASAW NATIONS,
By MANSFIELD, MCMURRAY & CORNISH, *Attorneys.*

REAL INDIANS ARE NOT OBJECTING TO CLAIMANTS RECEIVING THEIR PROPERTY RIGHTS.

It is not the full-blood Choctaws and Chickasaws that are objecting to claimants receiving their property rights. It is the mixed breed, in most cases one thirty-second or one sixty-fourth Indian blood, or the intermarried or adopted citizen, without one drop of Indian blood, who has been given a property right under acts of Congress or through favoritism extended by the administrative officers, in both cases without authority of law. It is from this class of people that the protests against claimants receiving their property come—the same designing class of people who held practically the entire trust estate for their exclusive use and benefit prior to the intervention of the Government of the United States, and who were directly responsible for the intervention by the United States in order to protect the rights of the great majority of the rightful beneficiaries under the trust.

Whatever may have been the real purpose of Congress in interfering in the affairs of the Choctaw and Chickasaw Indians—whether it was the patriotic and laudable desire to administer upon this trust estate, so that every person who was in law, equity, and good conscience entitled to receive his individual share should receive it, or whether the intervention was for political and selfish purposes—certain it is that conditions in these nations are in an infinitely worse condition than before the intervention of the Federal Government. Before this intervention claimants were permitted to live upon their lands and to enjoy the improvements made thereon and the fruits of their labor. Under the criminal mismanagement of this estate by administrative officers of the Federal Government many of claimants have been driven from their homes in which they have lived all their lives; driven from the land they have cultivated for fifty years; their homes and all their improvements thereon, the result of the savings of years, given to white men—adopted or intermarried. In many instances the result of the labor of a family for a generation has been confiscated by the Federal Government and the property turned over to either a white intermarried or an adopted citizen or some worthless mixed breed, probably one sixty-fourth Indian blood, too indolent to ever erect a home in which to live.

ACTUAL CASE.

Let us illustrate this further by an actual case. A person of seven-eighths Choctaw blood, who was married to a woman of three-quarters Choctaw, was living in the home built by his grandfather on this trust property. He was one of that class of persons known as a "court-judgment citizen," as he, his wife, and their children had been decreed by judgment of the United States district court for the southern district of the Indian Territory to be a Choctaw Indian by blood and descent, and duly enrolled as such by the Commission. The judgment of the United States district court in his case had been vacated by the decision of that now famous legislative commission known as the "Choctaw-Chickasaw citizen court." Some time after the rendition of the decree of this legislative commission, Indian police were sent to his home to eject him from the land and home built by his grandfather, and in which he was born. They arrived at midnight during the latter part of November. It was a cold, inclement night, sleeting and raining. When these officers arrived his wife was in the throes of childbirth. They served notice on him that he must vacate his home that night. He pleaded with them not to enforce the order, as it was impossible to move his wife. The officers refused. Grabbing his rifle he attempted to shoot the Indian police. His wife pleaded with him not to commit such an act. Finally the Indian police agreed that he and his wife might remain until 5 o'clock the next morning. Shortly after daybreak the new-born child was wrapped in a blanket and the wife was laid in a lumber wagon and driven to a neighbor's house several miles distant. That home, with all the improvements placed upon it by his grandfather, his father, and himself, is now in the possession of an intermarried citizen who has no legal right to the property.

BLOOD RELATIVES OF CLAIMANTS CLAIMING THROUGH THE SAME COMMON ANCESTORS ON TRIBAL ROLLS AND CLAIMANTS DENIED ENROLLMENT.

These 10,000 claimants acquired their right to share in this trust property from the same common source from which the great majority of those who have been enrolled as blood citizens acquired their rights. In many instances the grandmother and grandfather, or grandmother or grandfather, or mother and father, or mother or father, or sisters and brothers, or sister or brother, or other blood relatives of claimants, have been enrolled and have received their individual share of this trust property. The certified records contained in volumes 1 and 2, Senate Report No. 5013, Fifty-ninth Congress, second session, show these to be incontestable facts.

CHILDREN OF SIGNERS OF TREATY OF 1830, UNDER WHICH GRANT WAS MADE, DENIED THEIR RIGHTS.

In other cases the children of the signers of the treaty of 1830, under which the grant was made, have been denied their rights, notwithstanding the fact that they have been residing in the Choctaw or Chickasaw Nation for the last twenty-five years, as is evidenced by the following official documents in the case of John T. Williams, a resident of Swink, Choctaw Nation, and who is the son of Ambrose Williams, who was one of the REPRESENTATIVES OF THE CHOCTAW NATION WHO NEGOTIATED THE TREATY OF 1830, AND WHOSE NAME APPEARS THEREON AS ONE OF THE SIGNERS OF THAT TREATY.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 4, 1907.

JOHN T. WILLIAMS, *Esq., Swink, Ind. T.*

SIR: The Office is in receipt of three letters written by you, one addressed to the Attorney-General of the United States, one to the Department of the Interior, and one to this Office, relative to your enrollment as a citizen of the Choctaw Nation and saying that you are going to have your rights as a citizen before you quit, and that you are going to appeal to the Supreme Court of the United States.

In reply, the Office can only repeat what it has told you heretofore, that it has no jurisdiction to consider any citizenship matter since the 4th of March, 1907, and that there is now no authority of law for placing the name of any person on any of the rolls of the Five Civilized Tribes in the Indian Territory.

THERE WAS NO QUESTION IN YOUR CASE AS TO YOUR INDIAN BLOOD, AND IT WAS NOT DENIED BY THE COMMISSIONER TO THE FIVE CIVILIZED TRIBES THAT YOU WERE A PERSON OF INDIAN BLOOD. However, the possession of Indian blood was not enough under the law to justify your enrollment as a citizen of the Choctaw Nation. There are many persons of Indian blood who are not entitled to enrollment as citizens of the Five Civilized Tribes in the Indian Territory.

The Office has no reason to object to your appeal to the Supreme Court of the United States, if you so desire.

Very respectfully,
C. F. LARRABEE,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

In the matter of the application for the enrollment of John T. Williams et al. as citizens by blood of the Choctaw Nation.

DECISION.

It appears from the record herein that application was duly made to the Commissioner to the Five Civilized Tribes for the enrollment of John T. Williams and his six minor children, Willie Jesse, Janie Virginia, Leona Gertrude, Johnnie David, Nannie Candler, and Jimmie Clarence Williams, as citizens by blood of the Choctaw Nation, within the time limited by the provisions of the act of Congress approved April 26, 1906 (34 Stats., 137).

The record in this case shows that John T. Williams was born about the year 1856 and is the son of AMBROSE WILLIAMS, AN ALLEGED ONE-HALF BLOOD CHOCTAW INDIAN, and Sarah Williams, a noncitizen white woman, and that the minor applicants herein are the children of said John T. Williams and E. C. Williams, a noncitizen.

It does not appear from the record herein or from the records in possession of this office that any of the applicants herein has ever been enrolled by the Choctaw tribal authorities or admitted to Choctaw citizenship by a duly constituted court or committee of the Choctaw Nation, or by the Commission to the Five Civilized Tribes, or by the United States court in Indian Territory, under the provisions of the act of Congress approved June 10, 1896 (29 Stats., 321).

I am, therefore, of the opinion that the application made for the enrollment of John T. Williams, Willie Jesse Williams, Janie Virginia Williams, Leona Gertrude Williams, Johnnie David Williams, Nannie Candler Williams, and Jimmie Clarence Williams as citizens by blood of the Choctaw Nation should be denied, under the provisions of the act of Congress approved June 28, 1898 (30 Stats., 495), and it is so ordered.

TAMS BIXBY, *Commissioner.*

MUSKOGEE, IND. T., *October 15, 1906.*

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

In the matter of the application for the enrollment of Loutitia Williams as a citizen by blood of the Choctaw Nation.

DECISION.

It appears from the record herein that on June 20, 1906, application was made to the Commissioner to the Five Civilized Tribes for the enrollment of Loutitia Williams as a citizen by blood of the Choctaw Nation, under the provisions of the act of Congress approved April 26, 1906 (34 Stats., 137).

The record in this case shows that the applicant, Loutitia Williams, was born on April 29, 1905, and is the daughter of John T. Williams, an applicant for enrollment as a citizen by blood of the Choctaw Nation, and whose application for enrollment as such has heretofore been denied by the Commissioner to the Five Civilized Tribes, and E. C. Williams, a noncitizen.

I am, therefore, of the opinion that Loutitia Williams is not entitled to enrollment as a citizen by blood of the Choctaw Nation, and that her application for enrollment as such should be denied under the provisions of section 2 of the act of Congress approved April 26, 1906 (34 Stats., 137), and it is so ordered.

TAMS BIXBY, *Commissioner.*

MUSKOGEE, IND. T., *October 17, 1906.*

ROLLS MADE BY ADMINISTRATIVE OFFICERS NOT FINAL.

Section 29 of the act approved June 28, 1898 (30 Stat. L., 495) provided:

"That all the lands within the Indian Territory belonging to the Choctaw and Chickasaw Indians shall be allotted to the members of said tribes so as to give to the members of these tribes, so far as possible, a fair and equal share thereof, considering the character and fertility of the soil and the location and value of the lands."

The same section provides:

"That each member of the Choctaw and Chickasaw tribes * * * shall, where it is possible, have the right to take his allotment of land, the improvements on which belong to him, and such improvements shall not be estimated in the value of his allotment * * * and due care taken that all persons entitled thereto have allotments made to them."

Section 11 of the supplemental agreement with the Choctaw and Chickasaw Indians, approved July 1, 1902 (32 Stat. L., 641) provided:

"There shall be allotted to each member of the Choctaw and Chickasaw tribes * * * land equal in value to 320 acres of the average allottable land of the Choctaw and Chickasaw Nations."

Section 21 of the act approved June 28, 1898, directed the Commission to enroll all persons of Choctaw or Chickasaw Indian blood, and then declared:

"The rolls 'SO MADE,' when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws shall alone constitute the several tribes which they represent."

Section 16 of the act approved April 26, 1906, provided:

"When allotments as provided by this and other acts of Congress have been made to all members and freedmen of the Choctaw and Chickasaw tribes. * * *"

The Secretary of the Interior is authorized to sell and dispose of the residue of said lands.

As the rolls are not "SO MADE" as directed by the act of 1898, and as "ALLOTMENTS AS PROVIDED BY THIS AND OTHER ACTS OF CONGRESS" have not been made to all members of the Choctaw and Chickasaw tribes, it follows of necessity that the rolls are not final, notwithstanding the fact they have been approved by the Secretary of the Interior.

Section 2 of the act of April 26, 1906, provided:

"That the rolls of the tribes affected by this act shall be fully completed on or before the 4th day of March, 1907, and the Secretary of the Interior shall have no jurisdiction to approve the enrollment of any person after that date."

The ROLLS ARE NOT FINAL BECAUSE UPWARD OF 10,000 PERSONS OF CHOCTAW AND CHICKASAW INDIAN BLOOD AND DESCENT HAVE NOT BEEN ENROLLED, AND THE ALLOTMENTS ARE NOT FINAL BECAUSE ALLOTMENTS HAVE NOT BEEN MADE TO EVERY PERSON ENTITLED THERETO.

GRANTING OF RELIEF ASKED BY CLAIMANTS WILL NOT DISTURB TITLES IN THESE TRUST LANDS.

Claimants are not asking relief that will unsettle conditions in the Choctaw and Chickasaw nations. They are not asking to disturb titles to allotments heretofore made. They are asking merely the right, freely enjoyed by each and every one of the persons enrolled, to select from the unallotted lands allotments equal in value and extent to the allotments heretofore selected by those persons enrolled by the administrative officers. There is still remaining approximately 3,000,000 acres of unallotted lands, the common property of the Choctaws and Chickasaws, and from these unallotted lands claimants desire the right to select their allotments. Is it possible that although they are beneficiaries, equal with those persons who have been enrolled by the administrative officers, under the treaties and the grant, and each and every act of Congress, that because of errors of law, fraud and gross mistake of fact committed by the administrative officers, they are to-day remediless? To assert that they are is to assert a proposition so monstrous that it can receive no sanction or recognition by a tribunal composed of honest men.

RELIEF SHOULD BE AFFORDED CLAIMANTS WITHOUT DELAY.

We have already shown by incontestable evidence that—

I.

By the treaty of 1830 it was stipulated and agreed that the fee to the property in controversy should be conveyed to the Choctaw Nation, to be held by said nation IN TRUST for the EXCLUSIVE USE AND BENEFIT OF THOSE PERSONS WHO COMPRISED THE CHOCTAW COMMUNITY OF INDIANS, AS IT EXISTED ON THE 27th DAY OF SEPTEMBER, 1830, AND THEIR DESCENDANTS.

II.

That it was stipulated and agreed by the treaty that the grant should be a PRESENT GRANT in FEE SIMPLE.

III.

That on the 23d day of March, 1842, the President issued a patent conveying the legal title to the property in controversy to the Choctaw Nation IN TRUST FOR THE EXCLUSIVE USE AND BENEFIT OF THOSE PERSONS WHO COMPRISED THE CHOCTAW COMMUNITY ON THE 27th DAY OF SEPTEMBER, 1830, AND THEIR DESCENDANTS.

IV.

That by the treaty of January 17, 1837, the Chickasaw people acquired, by purchase, an equal, undivided, individual interest in the common trust property of the Choctaws, on the same terms that the Choctaws held it, namely, EVERY PERSON WHO WAS A MEMBER OF THE CHICKASAW COMMUNITY ON THE 17th DAY OF JANUARY, 1837, ACQUIRED A VESTED INDIVIDUAL UNDIVIDED INTEREST IN THE COMMON TRUST PROPERTY OF THE CHOCTAWS AND CHICKASAWS EQUAL WITH EVERY OTHER MEMBER OF THE CHOCTAW AND CHICKASAW COMMUNITIES, as did also HIS OR HER DESCENDANTS IMMEDIATELY UPON THEIR BIRTH.

V.

That residence upon the land was not one of the conditions upon which the grant was made, and, therefore, no person could lose his or her property interest in the common trust property by failure to live thereon.

VI.

That by the treaty of April 28, 1866, ALL PERSONS THERETOFORE HELD IN SLAVERY by the Choctaws and THEIR DESCENDANTS BORN PRIOR TO APRIL 28, 1866, acquired, by purchase, a vested individual interest in the common trust property equal to 40 acres of land, contingent upon the division of the trust property in severalty prior to the demise of such persons, and in the event of his death before the division of the property his property right became extinct, as it was incapable of being transmitted to his children or heirs.

VII.

That under the various Congressional enactments, and agreements with a majority of the members of the tribes, providing for the preparation of tribal rolls, the division of the common trust property, and the dissolution of the tribal governments as administered by administrative officers, thousands of persons of Choctaw or Chickasaw Indian blood and their descendants have been denied their vested, individual property rights in this common trust property.

VIII.

That thousands of intermarried and adopted citizens, possessed of no Indian blood and possessed of no rights in the common trust property, under the treaty and the grant have received distributive shares thereof without authority of law.

IX.

That thousands of descendants of persons held in involuntary servitude by the Choctaws, and born since the ratification of the treaty of January 17, 1866, have been allotted 40 acres of the average allottable lands of this trust property without authority of law.

X.

That more than a million dollars of the trust funds of these people have been appropriated without authority of law and paid to attorneys to defeat the rights of persons who were legally, equitably, and in good conscience entitled to share in this common trust property.

XI.

That thousands of persons have been denied their vested property rights in this common trust property through maladministration, bribery, official misconduct, criminal negligence, and mistake on the part of administrative officers.

XII.

That thousands of blood citizens have been denied their property rights and their property given to white people and negroes without authority of law.

XIII.

That the Government has hereby become liable to the legal beneficiaries under the trust to the extent of millions of dollars.

It is incumbent upon the United States to make restitution; to right these wrongs. They can now be corrected. Delay will prove fatal, and these people will then hound Congress and the administrative officers for generations to come, if necessary, until this controversy is referred to some court of competent jurisdiction for an equitable adjustment, and when that time comes the Government of the United States will pay for its gross mismanagement of this trust estate millions of dollars to claimants.

REMEDY.

What is the remedy? Place upon the statute books Senate bill 4736, Sixtieth Congress, first session, without delay, and add to it a provision directing the Attorney-General of the United States to bring suit in the proper courts to cancel, annul, and set aside every patent issued to every person who is not of the designated class of persons for whose exclusive use and benefit the grant was made, or who was not a slave or descendant of a slave of the Choctaws, and born prior to the ratification of the treaty of 1866.

The vast sums appropriated out of these trust funds by the Government for the payment of attorneys to defeat the rights of honest claimants should be repaid, and this estate in the future should be administered largely by the courts and not by administrative officers.

Respectfully submitted.

WEBSTER BALLINGER,
ALBERT J. LEE,
Counsel for Claimants.

The CHAIRMAN. The Chair sustains the point of order. The Clerk will read.

The Clerk read as follows:

SCHOOLS.

For the maintenance, strengthening, and enlarging of the tribal schools of the Cherokee, Creek, Choctaw, Chickasaw, and Seminole nations, and making provision for the attendance of children of parents of other than Indian blood therein, and the establishment of new schools under the control of the Department of the Interior, the sum of $150,000, or so much thereof as may be necessary, to be placed in the hands of the Secretary of the Interior, and disbursed by him under such rules and regulations as he may prescribe.

Mr. MANN. I reserve a point of order on the paragraph. I notice that this appropriation is only half what it was last year, as I understand it. Is it expected that Oklahoma will, before a great while, be able to provide for her own schools?

Mr. SHERMAN. Well, I should hope so, Mr. Chairman. The sum of $150,000 was appropriated two years ago, and of that sum $10,000 remained unexpended at the end of the fiscal year. For the present fiscal year $300,000 was appropriated, and during the first six months of the year $52,000 was expended; so that although the Department estimated and recommended the appropriation of $300,000 this year, the committee, in view of the fact that but $52,000 had been expended during the first six months of this fiscal year, believed that there was no good reason why the appropriation of year before last should be exceeded, so they cut the estimate in two.

Mr. MANN. The item itself, I suppose, is in the language of the provision of last year?

Mr. SHERMAN. Yes; it is.

Mr. MANN. It provides for the establishment of new schools, and a number of things of that sort?

Mr. SHERMAN. Yes.

Mr. MANN. Strengthening and enlarging tribal schools. Is it the expectation that anything like that will be done out of this fund, or is it simply to maintain what they have there?

Mr. SHERMAN. I suppose most of this will be expended in maintaining what is already there.

Mr. MANN. Has the gentleman any idea how soon we will get rid of the matter.

Mr. CARTER rose.

Mr. SHERMAN. The gentleman from Oklahoma wishes to answer that question, and I think I will let him do so.

Mr. CARTER. We shall be able to take care of our own schools, Indians, white people, and all alike, just as soon as you allow us to tax our lands there. At present we can not.

Mr. SHERMAN. Perhaps I can supplement that answer by telling the gentleman from Illinois that a bill has now been presented to the Indian Committee, and will be considered by it probably on Thursday of this week, which releases the restrictions on the alienation of a very large amount of the Indian lands in Oklahoma.

Mr. STEPHENS of Texas. But I should like to suggest that that will be too late for the benefit of the schools this year.

Mr. MANN. I have no objection to this item.

Mr. SHERMAN. The gentleman has reference to future and not present appropriations.

Mr. MANN. I can see the necessity of the Government making appropriations for the schools there.

Mr. STEPHENS of Texas. It will take some time for the lands to be placed on the tax rolls and for the assessors to assess and collect any taxes.

Mr. DAVENPORT. If the point of order is not insisted on, I desire to offer a small amendment, on page 38, in line 13, after the word "nations," to insert the words:

And in the Quapaw Agency, in the northeast part of Oklahoma, in Ottawa County.

I will say for the benefit of the House that there are a few Indians in the northeastern corner of Oklahoma, in Ottawa County, and there are a number of white children, children of what are known as United States parents before all were made United States citizens down there. They have had no schools, and it is very important that these children have some preparation made in order to start their schools at the same time that the children in other parts of Oklahoma get started. I shall be glad indeed to see that amendment inserted.

Mr. STEPHENS of Texas. About how many Indians are there to whom the gentleman has reference.

Mr. DAVENPORT. I do not know the number. There are several hundreds.

The CHAIRMAN. The Clerk will first report the amendment.

MESSAGE FROM THE SENATE.

The committee informally rose; and Mr. LAWRENCE having taken the chair as Speaker pro tempore, a message from the Senate, by Mr. CROCKETT, its reading clerk, announced that the Senate had passed without amendment bills of the following title:

H. R. 9218. An act amending an act approved June 10, 1880, entitled "An act to amend the statutes in relation to the immediate transportation of dutiable goods, and for other purposes;"

H. R. 6231. An act to attach Shelby County, in the State of Texas, to the Beaumont division of the eastern district of said State and to detach it from the Tyler division of said district;

H. R. 13430. An act to authorize the Chicago, Indianapolis and Louisville Railway Company to construct a bridge across the Grand Calumet River, in the city of Hammond, Ind.;

H. R. 14040. An act to authorize the county of Ashley, State of Arkansas, to construct a bridge across Bayou Bartholomew, at a point above Morrell, in said county and State, the dividing line between Drew and Ashley counties; and

H. R. 14781. An act to authorize Campbell County, Tenn., to construct a bridge across Powells River.

The message also announced that the Senate had passed the following resolutions, in which the concurrence of the House of Representatives was requested:

Senate concurrent resolution 21.

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and he is hereby, authorized and directed to cause a survey to be made of the Cape Fear River, North Carolina, from the city of Wilmington to the ocean, with a view to dredging and otherwise improving the same, and thereby obtaining a minimum depth of 30 feet and of sufficient width, and to submit a plan and estimate of cost of such improvement; such plan and estimate shall embrace the said increased depth and width over and above the existing project, and also a separate plan and estimate for the increased depth and requisite width based upon the existing depth and width of the present channel from the city of Wilmington to the ocean.

Senate concurrent resolution 25.

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and he is hereby, authorized and directed to cause an examination and survey of the harbor at St. Augustine, St. John County, Fla., and the entrance thereto through the North and Matanzas rivers and the Matanzas Inlet, with a view to determining the formation of a channel of a minimum depth of 16 feet and a width of 300 feet from the city of St. Augustine across its outer bar to the Atlantic Ocean, and the cost of construction of necessary jetties, breakwaters, and dredging in order to accomplish said purpose.

Senate concurrent resolution 31.

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and he is hereby, authorized and directed to cause an examination and survey to be made of New Smyrna Inlet, in the county of Volusia and State of Florida, with a view to deepening the same, and to submit estimates therefor.

Senate concurrent resolution 32.

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and he is hereby, authorized and directed to cause a survey to be made of the Washita River, Oklahoma, from the point of its confluence with the Red River to the town of Mountain View, in Kiowa County, Okla., with a view of dredging, cleaning out, and widening the channel, and to submit a plan and estimate for such improvements.

INDIAN APROPRIATION BILL.

The committee resumed its session.

The Clerk read as follows:

On page 38, in line 13, after the word "nations," insert the following:

"And in the Quapaw Agency, in the northeast part of Oklahoma, in Ottawa County."

Mr. MANN. I understand the amendment is reported for information.

Mr. DAVENPORT. I have had it reported to get it before the House. I offer it as an amendment.

Mr. MANN. But I have a point of order pending against the whole proposition.

Mr. DAVENPORT. If the point of order is pending, I do not desire at this time to offer the amendment.

Mr. SHERMAN. Unless we understand that the gentleman is not going to insist on his amendment I shall renew the point of order on this myself if the point of order is withdrawn.

The CHAIRMAN. Did the gentleman from Illinois withdraw the point of order?

Mr. MANN. No; I did not. This changes the law so far as it confers on the Secretary of the Interior power to dispose of this money. That is clearly a change of existing law.

Mr. DAVENPORT. Mr. Chairman, I will withdraw my amendment.

The CHAIRMAN. Without objection the amendment will be withdrawn.

There was no objection.

Mr. MANN. Then I will withdraw the point of order.

The CHAIRMAN. The point of order is withdrawn and the Clerk will read.

The Clerk read as follows:

FOR COMPLETION OF WORK.

For the completion of the work heretofore required by law to be done by the Commission to the Five Civilized Tribes, $143,410, said appropriation to be disbursed under the direction of the Secretary of the Interior, and who is hereby authorized to designate the Commissioner to the Five Civilized Tribes, or other suitable person or persons, to perform, under his direction, any duty now or hereafter required by law

of the Secretary of the Interior relating to affairs in the Indian Territory, and to pay from this appropriation clerical and other expenses incident to such work.

Mr. MANN. Mr. Chairman, I raise a point of order on that paragraph.

Mr. SHERMAN. I would like to have the gentleman reserve the point of order.

Mr. MANN. I will reserve it. The point of order I expect to make, unless the gentleman from New York convinces me to the contrary, is to that part of the paragraph beginning after the word "Interior," in line 1, page 39 of the bill, down to the end of the paragraph.

Mr. SHERMAN. It gives the Secretary of the Interior the right to devolve the duties incumbent on him under prior acts upon the agent at the Union Agency, rather than to continue a Commissioner to the Five Civilized Tribes. It is possible for him to require under this provision the agent at the Union Agency to represent him in all matters pertaining to the tribe.

Mr. MANN. The provision says that—

The Secretary of the Interior is hereby authorized to designate the Commissioner to the Five Civilized Tribes, or other suitable person or persons, to perform under his direction any duty now or hereafter required by law of the Secretary of the Interior relating to affairs in the Indian Territory.

I never heard a proposition to confer such broad power upon any Department officer of the Government. We say in advance that if we shall require hereafter the Secretary of the Interior to exercise certain discretion or power in the Territory, he may designate anybody he pleases to do it.

Mr. SHERMAN. We did authorize the Secretary of the Interior to appoint a Commissioner to the Five Civilized Tribes to perform the duties which devolved upon him.

Mr. MANN. That is a different proposition.

Mr. SHERMAN. That authority has expired, and what we desire to do by this provision—perhaps it is drawn pretty broad—is to permit the Secretary to call upon the agent at the Union Agency, who is now there, to perform the duty, and also to discharge the duties that have heretofore been discharged by the five Commissioners, and thereafter by one Commissioner, to the Five Civilized Tribes.

Mr. MANN. If we say by law that the Secretary of the Interior shall have the power to do so and so, haven't we a right to assume that we are entitled to the discretion of the Secretary of the Interior and hold him responsible?

Mr. SHERMAN. We have when we do that.

Mr. MANN. This provision would relieve him of all responsibility of anything in the Indian Territory.

Mr. SHERMAN. We have heretofore said that the duties that devolved upon him could be discharged by the Commissioner he named, and he did discharge the duties. Now, the time during which that Commissioner could discharge those duties has expired. It is suggested that this change be made so that he can devolve the same duties on another official.

Mr. MANN. Is this a request which he sent in?

Mr. SHERMAN. It is.

Mr. MANN. I think some 15-cent clerk in the Department must have drawn this provision; I am sure it had not the approval of the Secretary of the Interior himself.

Mr. SHERMAN. It did meet the approval of the Secretary of the Interior and the Secretary of the Treasury; at least it comes to us with the approval of both officials.

Mr. FITZGERALD. Mr. Chairman, I desire to ask why the work will not be completed during the fiscal year?

Mr. SHERMAN. Because the allotments are not completed in all tribes. Allotments have not been equalized, the surplus lands have not been sold, and until all that is done we must have some forces down there to carry on the business.

Mr. FITZGERALD. There were five Commissioners, and their work was so dragged out and unsatisfactory——

Mr. SHERMAN. I think the gentleman does them an injustice to say that. The work did seemingly drag a little bit, but additional responsibilities and duties were placed upon that Commission.

Mr. FITZGERALD. That is true.

Mr. SHERMAN. By added legislation their work was enlarged and extended.

Mr. FITZGERALD. The point I was about to make was that for some reason the five Commissioners were abolished and the work devolved upon one Commissioner.

Mr. SHERMAN. Yes; that was done because the work was lessening, and it was thought that one competent man ought to be capable of exercising all the executive duties required under the statute.

Mr. FITZGERALD. They have been ten years at that work.

Mr. SHERMAN. Hardly that.

Mr. FITZGERALD. The Curtis Act was passed in 1898.

Mr. SHERMAN. Yes; about that; yes.

Mr. FITZGERALD. How long is it contemplated that this will last?

Mr. SHERMAN. It is believed that three years at the outside will wind up fully all the affairs of the Five Civilized Tribes; and it is believed that the appropriation required for another year will be not to exceed one-half that necessary for the next fiscal year.

The CHAIRMAN. Does the gentleman from Illinois make the point of order?

Mr. MANN. I make the point of order to that portion of the paragraph on page 39, commencing with the word "and" after the word "Interior" in line 1, to the end of the paragraph.

The CHAIRMAN. Does the gentleman from New York desire to be heard?

Mr. SHERMAN. No; that is new legislation, Mr. Chairman.

The CHAIRMAN. The point of order is sustained. The Clerk will read.

The Clerk read, as follows:

For support and education of 600 Indian pupils at the Indian school, Salem, Oreg., and for pay of superintendent, $102,200.

Mr. TAWNEY. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read, as follows:

After line 19, on page 41, insert:

"There shall not be paid out of any appropriation made in this act any greater rate of annual compensation to any superintendent of the Indian schools during the fiscal year 1909 than is authorized and paid out of appropriations made for the fiscal year 1908.

Mr. SHERMAN. Mr. Chairman, I raise the point of order that it is not germane to this particular provision. I am entirely willing to agree to return to the general provisions and have the gentleman offer such an amendment and will agree to it. I have no objection to the amendment, but it does not belong here.

Mr. TAWNEY. My reason for offering the amendment is that in going through the bill I observe there is no limitation whatever upon the compensation to be paid to these superintendents of Indian schools. Heretofore the bill has specifically provided for their salaries at so much per annum.

Mr. SHERMAN. That was all explained the other day when the gentleman was busy elsewhere. I do not object to the amendment.

Mr. TAWNEY. I think, notwithstanding the reason, that there is some necessity for a limitation on the appropriation, and I think it is germane to this. It applies not only to this school, but to all the schools that have superintendents, and will be compensated for out of the appropriations made in this bill.

The CHAIRMAN. Where does the gentleman think the amendment should properly go?

Mr. SHERMAN. I do not object to the limitation, but I object to its being in the wrong place. I suggest that it is not proper here.

The CHAIRMAN. Where does the gentleman suggest it should properly go?

Mr. TAWNEY. It is a general limitation upon the appropriation for the support of all the schools.

Mr. OLMSTED. It should go at the end of page 52.

Mr. SHERMAN. Or right before "Arizona," on page 53, where the general provisions are inserted.

Mr. TAWNEY. Very well, I am perfectly willing to put it in there if the gentleman will return to that.

Mr. MANN. Mr. Chairman, I think it should go in after line 5 on page 7.

Mr. SHERMAN. I think the suggestion of the gentleman from Illinois is correct, and that that is the better place for this provision, after line 5 on page 7.

Mr. TAWNEY. Mr. Chairman, I ask unanimous consent to return to page 7, and, after the end of line 5, to insert the amendment which I have offered.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

The question was taken, and the amendment was agreed to.

Mr. ELLIS of Oregon. Mr. Chairman, I offer the amendment which I send to the Clerk's desk.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

After the word "pupils," line 17, page 41, insert "including Alaskan Indians."

Mr. SHERMAN. Mr. Chairman, I raise the point of order on the amendment.

The CHAIRMAN. The gentleman from New York makes the point of order. Does the gentleman from Oregon desire to be heard?

Mr. ELLIS of Oregon. Yes, sir; I would if the gentleman will reserve the point.

Mr. SHERMAN. I will.

Mr. ELLIS of Oregon. Mr. Chairman, this school is located within the district of my colleague [Mr. HAWLEY], who is now absent from the House on business and by leave of the House, and I have been requested by constituents of his to offer this amendment when the proper point in the bill was reached. It seems that by reason of the increased facilities afforded for the education of Indians in the reservation schools this school has not been at all times kept up to its fullest capacity. It is a school affording special facilities for higher education, and a number of Indian pupils from Alaska would like to avail themselves of the opportunity of being educated there, but the Department has refused to give them admission. Now, by reason of the climatic conditions of southeastern Alaska, from which most of the pupils would come, and of that section of the State of Oregon where this school is located, it is probably the best adapted of any of the schools that are taking up the higher branches of Indian education to care for these pupils. There may be but few—I think there are comparatively few—who desire to embrace the opportunity, but I would like to see the provision of the law so broadened that they might do so in the event they offer themselves. I very much regret the chairman of the committee has seen fit to raise the point of order against it, because I believe there is merit in the amendment.

The CHAIRMAN. Does the gentleman from New York make the point of order?

Mr. SHERMAN. I do.

The CHAIRMAN. The Chair sustains the point of order.

The Clerk read as follows:

CHAMBERLAIN SCHOOL.

For the support and education of 200 Indian pupils at the Indian school at Chamberlain, S. Dak., and for pay of superintendent, $35,400; For general repairs and improvements, $2,500; In all, $37,500.

Mr. MANN. Mr. Chairman, I move to strike out the last word. I suggest to the gentleman from New York that this total is incorrect.

Mr. SHERMAN. I was going to ask when we got to the end of the bill to correct several totals.

Mr. MANN. That is where we will make amendments, I suppose. If the proposition of the gentleman covers it, very well; but this total is manifestly incorrect.

Mr. SHERMAN. Then we had better correct it now. I ask unanimous consent that the change be made.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Line 19, page 43, strike out the word "five" and insert the word "nine."

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

For subsistence of the Sioux, and for purposes of their civilization, as per agreement ratified by act of Congress approved February 28, 1877, $500,000: *Provided*, That this sum shall include transportation of supplies from the termination of railroad or steamboat transportation, and in this service Indians shall be employed whenever practicable: *And provided further*, That the number of rations issued shall not exceed the number of Indians on each reservation, and any excess in the number of rations issued shall be disallowed in the settlement of the agent's account: *Provided further*, That the unexpended balance for the fiscal year 1908 is hereby appropriated and made available for 1909.

Mr. MANN. Mr. Chairman, I hope the gentleman himself will move to strike out that last proviso. He made no objection to striking it out the other day, and I think he does not want to inaugurate a policy——

Mr. SHERMAN. I will not oppose the motion, but I prefer the gentleman to make the motion, however.

Mr. MANN. Mr. Chairman, I move to strike out the provision at the bottom of page 45, which reads:

Provided further, That the unexpended balance for the fiscal year 1908 is hereby appropriated and made available for 1909.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Pages 45 and 46, strike out the proviso beginning on line 23, page 45, and extending to and including line 2 on page 46.

The CHAIRMAN. The question is on the motion offered by the gentleman from Illinois.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

For the maintenance of the asylum for insane Indians at Canton, S. Dak., for incidental and all other expenses necessary for its proper conduct and management, including pay of employees, and for necessary expense of transporting insane Indians to and from said asylum $25,000.

Mr. FITZGERALD. Mr. Chairman, I move to strike out the last word. How many insane Indians were in this asylum last year?

Mr. SHERMAN. Sixty-two.

Mr. FITZGERALD. Is there any intention to discontinue this asylum, I wish to inquire of the gentleman in charge of the bill?

Mr. SHERMAN. There is no indication of any such intent.

Mr. FITZGERALD. I thought now that the "reason" for retaining the asylum had disappeared the committee would have considered the advisibility of discontinuing it.

Mr. SHERMAN. The gentleman from New York remembers very well his attempts and mine to strike this provision from the bill, and that was at a time when there was a good deal more reason for not appropriating for its support than there is now. It has been maintained for some years, and it has reached a point where we are supporting quite a few insane Indians.

Mr. MANN. How many?

Mr. SHERMAN. Sixty-two.

Mr. MANN. At $500 apiece?

Mr. SHERMAN. Not quite that. If it were fifty Indians it would be $500 apiece. It is an excessive cost, of course. It is not excessive when you consider the number of the insane, however, that are there maintained. That is all I can say about it.

Mr. FITZGERALD. The cost of maintaining the insane here in Washington is considered high, and that is $220 per capita, and it costs $440 in this asylum.

Mr. SHERMAN. It is a very high per capita cost. Nobody can deny that proposition, but it is the only asylum for the insane Indians that is maintained anywhere; and considering the fact that there are but sixty-two patients, I think perhaps the cost is not excessive. At these other asylums, like the one in the District, to which the gentleman has referred, and the various hospitals throughout the State of New York, where the per capita cost is very much less than at Canton, of course the number of patients runs all the way from 700 to 800 up to 2,500.

Mr. MANN. Are there only sixty-two insane Indians in the United States?

Mr. SHERMAN. I think there are many more.

Mr. FITZGERALD. That is all that are confined.

Mr. SHERMAN. At Canton.

Mr. FITZGERALD. If I knew any way to take care of these Indians I would suggest striking out this paragraph, because whatever excuse there may be for keeping Indians together in a school, I have never been able to appreciate the argument that required Indians exclusively to inhabit an insane asylum. I appreciate the disadvantages under which the Commissioner has labored, and still labors, perhaps, under this provision. I simply wish to call attention to it in the hope that the Department, which I think should investigate and make the recommendations, would suggest some way by which these sixty-two Indians be taken care of in other institutions and the Government saved the cost of maintaining this one.

I withdraw my pro forma amendment.

The Clerk read as follows:

For the construction and extension of an irrigation system within the diminished Shoshone or Wind River Reservation, in Wyoming, $125,000.

Mr. FITZGERALD. Mr. Chairman, I reserve a point of order.

Mr. MANN. Mr. Chairman, I reserve a point of order.

The CHAIRMAN. The gentleman from New York [Mr. FITZGERALD] reserves the point of order on what portion?

Mr. FITZGERALD. I do that for the purpose of asking, Mr. Chairman, why this appropriation is not made reimbursable to the Government. The Shoshone Reservation was allotted——

Mr. MONDELL. Mr. Chairman, my attention has not been called to this item, but now that the gentleman has called my attention to it I think there is no question but that it should be made reimbursable from the sale of lands.

Mr. SHERMAN. Mr. Chairman, with this point of order pending, it being ten minutes past 5, and it also being apparent that there is going to be some little discussion, I move that the committee do now rise.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. PERKINS, chairman of the Committee of the Whole House on the state of the Union, reported that the committee had had under consideration the bill H. R. 15219, the Indian appropriation bill, and had come to no resolution thereon.

SENATE CONCURRENT RESOLUTIONS REFERRED.

Under clause 2, Rule XXIV, the following concurrent resolutions were taken from the Speaker's table and referred to their appropriate committees as indicated below:

Senate concurrent resolution 21.

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and he is hereby, authorized and directed to cause a survey to be made of the Cape Fear River, North Carolina, from the city of Wilmington to the ocean, with a view to dredging and otherwise improving the same, and thereby obtaining a minimum depth of 30 feet, and of sufficient width, and to submit a plan and estimate of cost of such improvement, such plan and estimate shall embrace the said increased depth and width over and above the existing project, and also a separate plan and estimate for the increased depth and requisite width based upon the existing depth and width of the present channel from the city of Wilmington to the ocean—

to the Committee on Rivers and Harbors.

Senate concurrent resolution 25.

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and is hereby, authorized and directed to cause an examination and survey of the harbor at St. Augustine, St. John County, Fla., and the entrance thereto through the North and Matanzas rivers and the Matanzas Inlet, with a view to determining the formation of a channel of a minimum depth of 16 feet and a width of 300 feet, from the city of St. Augustine, across its outer bar, to the Atlantic Ocean, and the cost of construction of necessary jetties, breakwaters, and dredging in order to accomplish said purpose—

to the Committee on Rivers and Harbors.

Senate concurrent resolution 31.

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and he is hereby, authorized and directed to cause a survey to be made of the Washita River, Oklahoma, from the point of its confluence with the Red River to the town of Mountain View, in Kiowa County, Okla., with a view of dredging, cleaning out, and widening the channel, and to submit a plan and estimate for such improvements—

to the Committee on Rivers and Harbors.

Senate concurrent resolution 32.

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and is hereby, authorized and directed to cause an examination and survey to be made of New Smyrna Inlet, in the county of Volusia and State of Florida, with a view to deepening the same, and to submit estimates therefor—

to the Committee on Rivers and Harbors.

ENROLLED BILLS SIGNED.

The Speaker announced his signature to enrolled bills of the following titles:

S. 485. An act to create a new division of the northern judicial district of Texas and to provide for terms of court at Amarillo, Tex., and for a clerk for said court, and for other purposes; and

S. 1256. An act for the relief of Pope & Talbot, of San Francisco, Cal.

ENROLLED BILLS PRESENTED TO THE PRESIDENT FOR HIS APPROVAL.

Mr. WILSON of Illinois, from the Committee on Enrolled Bills, reported that this day they had presented to the President of the United States, for his approval, the following bills:

H. R. 9217. An act amending sections 2533 and 2534 of Revised Statutes, so as to change the name of the Fairfield collection district.

H. R. 558. An act to extend to the port of Chattanooga, Tenn., the privileges of immediate transportation of dutiable merchandise without appraisement.

H. R. 14011. An act amending an act approved June 10, 1880, entitled "An Act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes."

VICKSBURG NATIONAL MILITARY PARK.

By unanimous consent, reference of the bill (H. R. 11308) providing for competitive designs for a naval monument in the Vicksburg National Military Park was changed from the Committee on Military Affairs to the Committee on Naval Affairs.

LEAVES OF ABSENCE.

By unanimous consent, leaves of absence were granted as follows:

To Mr. HAMILTON, for four days, on account of important business.

To Mr. DIEKEMA, for four days, on account of important business.

To Mr. ALLEN, for three days, on account of important business.

To Mr. BURTON of Ohio, for four days, on account of important business.

To Mr. FASSETT, until February 24, on account of important business.

ADJOURNMENT.

Mr. SHERMAN. Mr. Speaker, I move that the House do now adjourn.

Mr. CLARK of Florida. Will the gentleman withhold his motion for a moment? I simply desire to ask unanimous consent to print in the RECORD a letter in reference to the cotton tax.

The SPEAKER. The gentleman from Florida asks unanimous consent to print in the RECORD a letter in reference to the cotton tax. Is there objection?

Mr. PAYNE. I object, Mr. Speaker.

The motion to adjourn was then agreed to.

And accordingly (at 5 o'clock and 12 miuntes p. m.) the House adjourned.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, the following executive communications were taken from the Speaker's table and referred as follows:

A letter from the Acting Secretary of War, transmitting, with a letter from the Chief of Engineers, report of examination and survey of the Potomac River at Mount Vernon, Va.—to the Committee on Rivers and Harbors and ordered to be printed.

A letter from the Acting Secretary of War, transmitting, with a letter from the Chief of Engineers, report of examination and survey of Matinicus Harbor, Maine—to the Committee on Rivers and Harbors and ordered to be printed with illustrations.

A letter from the Acting Secretary of War, transmitting, with a letter from the Chief of Engineers, report of examination and survey of Onancock River, Virginia—to the Committee on Rivers and Harbors and ordered to be printed.

A letter from the Secretary of War, transmitting, with a letter from the Chief of Engineers, report of examination of Saluda River, South Carolina—to the Committee on Rivers and Harbors and ordered to be printed.

A letter from the Acting Secretary of War, transmitting, with a letter from the Chief of Engineers, report of examination of Congaree River, South Carolina—to the Committee on Rivers and Harbors and ordered to be printed.

A letter from the Acting Secretary of War, transmitting, with a letter from the Quartermaster-General, a draft of proposed legislation relating to certain traveling expenses of Army officers—to the Committee on Military Affairs and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the several Calendars therein named, as follows:

Mr. SMITH of Iowa, from the Committee on Appropriations, to which was referred the resolution of the House (H. J. Res. 96) directing the Secretary of the Treasury to withhold payment of the sum of $10,000 appropriated by the act making appropriations for sundry civil expenses for the fiscal year ending June 30, 1907, reported the same without amendment, accompanied by a report (No. 786), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. PRAY, from the Committee on the Public Lands, to which was referred the bill of the House (H. R. 13577) providing for the resurvey of certain public lands in the State of Nebraska, reported the same with amendment, accompanied by a report (No. 790), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. RICHARDSON, from the Committee on Interstate and Foreign Commerce, to which was referred the bill of the House (H. R. 16051) to authorize the Centerville Power Company, a corporation organized under the laws of the State of Alabama, to construct a dam across the Cahaba River in said State at or near Centerville, Ala., reported the same without amendment, accompanied by a report (No. 792), which said bill and report were referred to the House Calendar.

Mr. ALEXANDER of New York, from the Committee on the Judiciary, to which was referred the bill of the House (H. R. 13649) providing for the hearing of cases upon appeal from the district court for the district of Alaska in the circuit court of appeals for the ninth circuit, reported the same without amendment, accompanied by a report (No. 793), which said bill and report were referred to the House Calendar.

Mr. MONDELL, from the Committee on the Public Lands, to

which was referred the bill of the House (H. R. 16277) to provide for the sale of large-growth and matured timber on lands heretofore granted to the Territory of New Mexico, and for other purposes, reported the same with amendments, accompanied by a report (No. 795), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, private bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the Committee of the Whole House, as follows:

Mr. HOLLIDAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 603) granting an increase of pension to John A. M. La Pierre, reported the same with amendments, accompanied by a report (No. 699), which said bill and report were referred to the Private Calendar.

Mr. BRADLEY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 1034) granting an increase of pension to James Carroll, reported the same with amendment, accompanied by a report (No. 700), which said bill and report were referred to the Private Calendar.

Mr. BOYD, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 1055) granting an increase of pension to Joel F. Overholser, reported the same with amendment, accompanied by a report (No. 701), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H R. 1059) granting an increase of pension to Hannegan C. Norvell, reported the same with amendment, accompanied by a report (No. 702), which said bill and report were referred to the Private Calendar.

Mr. ANSBERRY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 1590) granting an increase of pension to Nelson Wolfley, reported the same with amendment, accompanied by a report (No. 703), which said bill and report were referred to the Private Calendar.

Mr. FULLER, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 1673) granting an increase of pension to George Athey, reported the same with amendment, accompanied by a report (No. 704), which said bill and report were referred to the Private Calendar.

Mr. BOYD, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 2204) granting an increase of pension to Andrew Risser, reported the same with amendment, accompanied by a report (No. 705), which said bill and report were referred to the Private Calendar.

Mr. SULLOWAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 2350) granting an increase of pension to Richard P. McGrath, reported the same with amendment, accompanied by a report (No. 706), which said bill and report were referred to the Private Calendar.

Mr. BOYD, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 2535), granting an increase of pension to John B. Evans, reported the same with amendment, accompanied by a report (No. 707), which said bill and report were referred to the Private Calendar.

Mr. SULLOWAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 2648), granting an increase of pension to Ellison Gilbert, reported the same with amendment, accompanied by a report (No. 708), which said bill and report were referred to the Private Calendar.

Mr. ANSBERRY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 2855), granting an increase of pension to Samuel H. Hurst, reported the same with amendment, accompanied by a report (No. 709), which said bill and report were referred to the Private Calendar.

Mr. BRADLEY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 2863), granting an increase of pension to John Findlay, reported the same without amendment, accompanied by a report (No. 710), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 2873) granting an increase of pension to Frank Rushaloo, reported the same without amendment, accompanied by a report (No. 711), which said bill and report were referred to the Private Calendar.

Mr. DIXON, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 3491) granting an increase of pension to William Hall, reported the same without amendment, accompanied by a report (No. 712), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 3493) granting an increase of pension to Levi Nicholson, reported the same with amendment, accompanied by a report (No. 713), which said bill and report were referred to the Private Calendar.

Mr. BOYD, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 3614) granting an increase of pension to James B. Boyer, reported the same with amendments, accompanied by a report (No. 714), which said bill and report were referred to the Private Calendar.

Mr. WEISSE, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 3802) granting an increase of pension to Andreas Schmidt, reported the same with amendment, accompanied by a report (No. 715), which said bill and report were referred to the Private Calendar.

Mr. DIXON, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 3845) granting an increase of pension to Philip Ebright, reported the same with amendment, accompanied by a report (No. 716), which said bill and report were referred to the Private Calendar.

Mr. WEISSE, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 4102) granting an increase of pension to William H. C. Davis, reported the same with amendments, accompanied by a report (No. 717), which said bill and report were referred to the Private Calendar.

Mr. BRADLEY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 4125) granting an increase of pension to Judson P. Adams, reported the same without amendment, accompanied by a report (No. 718), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 4295) granting a pension to John Maguire, reported the same with amendments, accompanied by a report (No. 719), which said bill and report were referred to the Private Calendar.

Mr. FULLER, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 4351) granting a pension to Osborne Eddy, reported the same with amendments, accompanied by a report (No. 720), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 4490) granting an increase of pension to James H. Thompson, reported the same with amendment, accompanied by a report (No. 721), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 4497) granting an increase of pension to Alexander Depuy, reported the same without amendment, accompanied by a report (No. 722), which said bill and report were referred to the Private Calendar.

Mr. HOLLIDAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 4522) granting an increase of pension to William H. Hanson, reported the same with amendments, accompanied by a report (No. 723), which said bill and report were referred to the Private Calendar.

Mr. SMITH of Michigan, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 5347) granting an increase of pension to William M. Stevenson, reported the same with amendments, accompanied by a report (No. 724), which said bill and report were referred to the Private Calendar.

Mr. DIXON, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 5422) granting an increase of pension to William Dunlap, reported the same with amendments, accompanied by a report (No. 725), which said bill and report were referred to the Private Calendar.

Mr. WEISSE, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 5450) granting an increase of pension to Calvin E. Breed, reported the same with amendment, accompanied by a report (No. 726), which said bill and report were referred to the Private Calendar.

Mr. EDWARDS of Kentucky, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 5764) granting a pension to Mary O'Brien, reported the same with amendment, accompanied by a report (No. 727), which said bill and report were referred to the Private Calendar.

Mr. ANSBERRY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 5880) granting an increase of pension to Addi C. Pindell, reported the same without amendment, accompanied by a report (No. 728), which said bill and report were referred to the Private Calendar.

Mr. KIPP, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 6064) granting an increase of pension to Jeremiah Beck, reported the same without amendment, accompanied by a report (No. 729), which said bill and report were referred to the Private Calendar.

Mr. ANSBERRY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 6487) granting an increase of pension to Alexander W. Brownlie, reported the same with amendment, accompanied by a report (No. 730), which said bill and report were referred to the Private Calendar.

Mr. FULLER, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 6492) granting an increase of pension to Irvin Austin, reported the same with amendment, accompanied by a report (No. 731), which said bill and report were referred to the Private Calendar.

Mr. SMITH of Michigan, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 6866) granting an increase of pension to Ezra Prouty, reported the same without amendment, accompanied by a report (No. 732), which said bill and report were referred to the Private Calendar.

Mr. WEISSE, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 6900) granting an increase of pension to Hiram Spear, reported the same with amendment, accompanied by a report (No. 733), which said bill and report were referred to the Private Calendar.

Mr. SMITH of Michigan, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 7060) granting an increase of pension to Simon W. White, reported the same with amendments, accompanied by a report (No. 734), which said bill and report were referred to the Private Calendar.

Mr. WEISSE, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 7307) granting an increase of pension to Benjamin L. Shepard, reported the same with amendment, accompanied by a report (No. 735), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 7530) granting an increase of pension to Charles Brown, reported the same with amendments, accompanied by a report (No. 736), which said bill and report were referred to the Private Calendar.

Mr. SULLOWAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 7781) granting an increase of pension to Phineas P. Trowbridge, reported the same with amendments, accompanied by a report (No. 737), which said bill and report were referred to the Private Calendar.

Mr. DIXON, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 7815) granting an increase of pension to William H. Patterson, reported the same without amendment, accompanied by a report (No. 738), which said bill and report were referred to the Private Calendar.

Mr. EDWARDS of Kentucky, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 8094) granting an increase of pension to Leander Wages, reported the same with amendments, accompanied by a report (No. 739), which said bill and report were referred to the Private Calendar.

Mr. KIPP, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 8145) granting an increase of pension to Edward E. Hackett, reported the same with amendments, accompanied by a report (No. 740), which said bill and report were referred to the Private Calendar.

Mr. ANSBERRY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 8385) granting an increase of Pension to Jackson Weathers, reported the same with amendment, accompanied by a report (No. 741), which said bill and report were referred to the Private Calendar.

Mr. BOYD, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 8672) granting an increase of pension to Isaiah Fowler, reported the same with amendment, accompanied by a report (No. 742), which said bill and report were referred to the Private Calendar.

Mr. HOLLIDAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 8747) granting an increase of pension to Alfred Jervais, reported the same with amendment, accompanied by a report (No. 743), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 8970) granting an increase of pension to Anthon W. Mortensen, reported the same with amendments, accompanied by a report (No. 744), which said bill and report were referred to the Private Calendar.

Mr. EDWARDS of Kentucky, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 8999) granting an increase of pension to John Hancock, reported the same with amendments, accompanied by a report (No. 745), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 9311) granting an increase of pension to George Harkless, reported the same with amendment, accompanied by a report (No. 746), which said bill and report were referred to the Private Calendar.

Mr. CHAPMAN, from the Committee on Invalid Penisons, to which was referred the bill of the House (H. R. 9560) granting an increase of pension to John H. Keys, reported the same with amendment, accompanied by a report (No. 747), which said bill and report were referred to the Private Calendar.

Mr. SULLOWAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 9612) granting an increase of pension to Emil Christian, reported the same with amendment, accompanied by a report (No. 748), which said bill and report were referred to the Private Calendar.

Mr. DIXON, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 9647) granting an increase of pension to W. W. Mayne, reported the same with amendments, accompanied by a report (No. 749), which said bill and report were referred to the Private Calendar.

Mr. FULLER, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 9789) granting an increase of pension to Samuel P. Hallam, reported the same with amendments, accompanied by a report (No. 750), which said bill and report were referred to the Private Calendar.

Mr. WEISSE, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 10041) granting an increase of pension to Jenkin Evans, reported the same with amendments, accompanied by a report (No. 751), which said bill and report were referred to the Private Calendar.

Mr. DIXON, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 10100) granting an increase of pension to Harrison G. Mace, reported the same without amendment, accompanied by a report (No. 752), which said bill and report were referred to the Private Calendar.

Mr. HOLLIDAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 10716) granting an increase of pension to August Gehb, reported the same without amendment, accompanied by a report (No. 753), which said bill and report were referred to the Private Calendar.

Mr. DIXON, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 10800) granting an increase of pension to Charles Gardner, reported the same with amendment, accompanied by a report (No. 754), which said bill and report were referred to the Private Calendar.

Mr. FULLER, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 10869) granting an increase of pension to William C. Tanner, reported the same with amendment, accompanied by a report (No. 755), which said bill and report were referred to the Private Calendar.

Mr. BOYD, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 11010) granting an increase of pension to George W. Florey, reported the same with amendments, accompanied by a report (No. 756), which said bill and report were referred to the Private Calendar.

Mr. CHAPMAN, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 11413) granting an increase of pension to Noah Jones, reported the same without amendment, accompanied by a report (No. 757), which said bill and report were referred to the Private Calendar.

Mr. BRADLEY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 11966) granting an increase of pension to Sophie Winters, reported the same with amendments, accompanied by a report (No. 758), which said bill and report were referred to the Private Calendar.

Mr. FULLER, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 12027) granting an increase of pension to Daniel A. Stedman, reported the same with amendment, accompanied by a report (No. 759), which said bill and report were referred to the Private Calendar.

Mr. BRADLEY, from the Committee on Invalid Pensions, to

which was referred the bill of the House (H. R. 12028) granting an increase of pension to Patrick Dolan, reported the same with amendment, accompanied by a report (No. 760), which said bill and report were referred to the Private Calendar.

Mr. SULLOWAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 12034) granting an increase of pension to Henry C. Crowell, reported the same with amendment, accompanied by a report (No. 761), which said bill and report were referred to the Private Calendar.

Mr. HOLLIDAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 12739) granting an increase of pension to Lemuel L. Kelso, reported the same with amendment, accompanied by a report (No. 762), which said bill and report were referred to the Private Calendar.

Mr. SMITH of Michigan, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 12616) granting an increase of pension to Horace A. Rexford, reported the same without amendment, accompanied by a report (No. 763), which said bill and report were referred to the Private Calendar.

Mr. SULLOWAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 12810) granting an increase of pension to Michael H. Glass, reported the same with amendments, accompanied by a report (No. 764), which said bill and report were referred to the Private Calendar.

Mr. CHAPMAN, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 12947) granting an increase of pension to James H. Pearce, reported the same with amendments, accompanied by a report (No. 765), which said bill and report were referred to the Private Calendar.

Mr. SMITH of Michigan, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 12970) granting an increase of pension to James McConnaha, reported the same with amendments, accompanied by a report (No. 766), which said bill and report were referred to the Private Calendar.

Mr. HOLLIDAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 13391) granting an increase of pension to Stephen Lyons, reported the same with amendment, accompanied by a report (No. 767), which said bill and report were referred to the Private Calendar.

Mr. EDWARDS of Kentucky, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 13783) granting an increase of pension to William H. Murray, reported the same without amendment, accompanied by a report (No. 768), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 13930) granting a pension to Rocelia Morse, reported the same with amendments, accompanied by a report (No. 769), which said bill and report were referred to the Private Calendar.

Mr. FULLER, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 13945) granting a pension to Abbie E. Barr, reported the same with amendment, accompanied by a report (No. 770), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 14316) granting an increase of pension to De Witt Eldred, reported the same with amendments, accompanied by a report (No. 771), which said bill and report were referred to the Private Calendar.

Mr. CHAPMAN, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 14474) granting an increase of pension to Mrs. Stephen Walker, reported the same with amendments, accompanied by a report (No. 772), which said bill and report were referred to the Private Calendar.

Mr. BOYD, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 14532) granting an increase of pension to Michael J. Hawley, reported the same with amendments, accompanied by a report (No. 773), which said bill and report were referred to the Private Calendar.

Mr. WEISSE, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 14584) granting an increase of pension to Marcus T. Camp, reported the same without amendment, accompanied by a report (No. 774), which said bill and report were referred to the Private Calendar.

Mr. EDWARDS of Kentucky, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 14671) granting an increase of pension to Benjamin Johnson, reported the same with amendment, accompanied by a report (No. 775), which said bill and report were referred to the Private Calendar.

Mr. KIPP, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 14724) granting a pension to Rush Patterson, reported the same with amendments, accompanied by a report (No. 776), which said bill and report were referred to the Private Calendar.

Mr. SULLOWAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 14844) granting an increase of pension to John B. Wheeler, reported the same with amendment, accompanied by a report (No. 777), which said bill and report were referred to the Private Calendar.

Mr. ANSBERRY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 14988) granting an increase of pension to Joseph Farley, reported the same with amendment, accompanied by a report (No. 778), which said bill and report were referred to the Private Calendar.

Mr. DIXON, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 15158) granting an increase of pension to Francis S. Fletcher, reported the same with amendment, accompanied by a report (No. 779), which said bill and report were referred to the Private Calendar.

Mr. FULLER, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 15356) granting a pension to Mary Hernden, reported the same with amendments, accompanied by a report (No. 780), which said bill and report were referred to the Private Calendar.

Mr. BRADLEY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 15538) granting an increase of pension to George W. Fairchild, reported the same without amendment, accompanied by a report (No. 781), which said bill and report were referred to the Private Calendar.

Mr. ANSBERRY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 15722) granting an increase of pension to J. W. Betts, reported the same with amendment, accompanied by a report (No. 782), which said bill and report were referred to the Private Calendar.

Mr. CHAPMAN, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 16349) granting an increase of pension to Frank Upchurch, reported the same without amendment, accompanied by a report (No. 783), which said bill and report were referred to the Private Calendar.

Mr. WEISSE, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 16610) granting an increase of pension to Michael Conniff, reported the same with amendment, accompanied by a report (No. 784), which said bill and report were referred to the Private Calendar.

Mr. MOUSER, from the Committee on Claims, to which was referred the bill of the House (H. R. 6664) for the relief of Roman Scholter, reported the same without amendment, accompanied by a report (No. 787), which said bill and report were referred to the Private Calendar.

Mr. HINSHAW, from the Committee on Indian Affairs, to which was referred the bill of the House (H. R. 10671) to authorize the Secretary of the Interior to issue patent in fee simple for certain lands of the Santee Reservation, in Nebraska, to the directors of school district No. 36, in Knox County, Nebr., reported the same with amendments, accompanied by a report (No. 788), which said bill and report were referred to the Private Calendar.

Mr. MILLER, from the Committee on Claims, to which was referred the bill of the House (H. R. 14000) for the relief of H. C. Linn and Samuel Powell, reported the same without amendment, accompanied by a report (No. 789), which said bill and report were referred to the Private Calendar.

Mr. HASKINS, from the Committee on War Claims, to which was referred the bill of the House (H. R. 13777) for the relief of the estate of Samuel Beatty, deceased, reported the same without amendment, accompanied by a report (No. 791), which said bill and report were referred to the Private Calendar.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, the Committee on Claims was discharged from the consideration of the bill (H. R. 8529) for the relief of Leroy Douglas, and the same was referred to the Committee on War Claims.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred as follows:

By Mr. ANDRUS: A bill (H. R. 16859) to provide for the purchase of a site for a public building at Mount Vernon, N. Y.—to the Committee on Public Buildings and Grounds.

By Mr. ANDREWS: A bill (H. R. 16860) to establish a United States land district to be known as the Tucumcari land district—to the Committee on the Public Lands.

By Mr. HOBSON: A bill (H. R. 16861) providing for the deposit of a model of any vessel of war of the United States Navy bearing the name of a State of the United States in the capitol building of said State—to the Committee on Naval Affairs.

By Mr. RAINEY: A bill (H. R. 16862) to place petroleum, crude or refined, or the products of petroleum, crude or refined, on the free list—to the Committee on Ways and Means.

By Mr. ANTHONY: A bill (H. R. 16863) to allow soldiers of the Regular Army, and veteran soldiers who are members of National Soldiers' Home, commutation of rations while on furlough—to the Committee on Military Affairs.

By Mr. RAUCH: A bill (H. R. 16864) to provide for the erection of a public building at Wabash, Ind.—to the Committee on Public Buildings and Grounds.

By Mr. ANTHONY: A bill (H. R. 16865) to allow surviving Mexican war soldiers who also served in the Federal Army in the war of the rebellion the benefits of the pension laws for each service—to the Committee on Pensions.

By Mr. SULZER: A bill (H. R. 16866) to provide for the erection of a public building at the city of Juneau, in the district of Alaska—to the Committee on Public Buildings and Grounds.

By Mr. HUMPHREY of Washington: A bill (H. R. 16867) to grant to the city of Seattle, in the State of Washington, certain rights of way for sewer and street purposes through and along the military reservation of Fort Lawton, Wash., and through the reservations for the Lake Washington Canal—to the Committee on Military Affairs.

By Mr. WILSON of Pennsylvania: A bill (H. R. 16868) to amend an act entitled "An act making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1908, and for other purposes," approved March 2, 1907—to the Committee on the Post-Office and Post-Roads.

By Mr. CALDER: A bill (H. R. 16869) fixing the compensation of the watchmen in the customs service at the port of New York—to the Committee on Ways and Means.

By Mr. CHANEY: A bill (H. R. 16870) to provide for the establishment of a Bureau of Mining Technology—to the Committee on Mines and Mining.

By Mr. NICHOLLS: A bill (H. R. 16871) to amend an act entitled "An act granting leaves of absence to clerks and employees in first and second class post-offices and to employees of the Post-Office Department employed in the mail-bag-repair shops connected with said Department," approved October 1, 1890—to the Committee on Expenditures in the Post-Office Department.

By Mr. SULZER: A bill (H. R. 16872) to make Lincoln's birthday a public holiday—to the Committee on the Judiciary.

By Mr. BRANTLEY: A bill (H. R. 16873) regulating interstate commerce in spirituous, vinous, and malt liquors, and intoxicating liquors of all kinds—to the Committee on the Judiciary.

By Mr. SHEPPARD: A bill (H. R. 16874) to amend section 13 of an act entitled "An act to divide the State of Texas into four judicial districts," approved March 11, 1902—to the Committee on the Judiciary.

By Mr. CAPRON: A bill (H. R. 16875) to establish a fish-hatching and fish-culture station at Strawberry Island, Point Judith Pond, Rhode Island—to the Committee on the Merchant Marine and Fisheries.

By Mr. LONGWORTH: A bill (H. R. 16876) to authorize the acquisition of land or buildings for the diplomatic and consular establishments of the United States—to the Committee on Foreign Affairs.

By Mr. ACHESON: A bill (H. R. 16877) providing for a preliminary examination and survey of Indian Creek, Ashtabula County, Ohio—to the Committee on Rivers and Harbors.

By Mr. GARNER: A bill (H. R. 16878) making appropriation for the construction and equipment of a Weather Bureau observatory at Del Rio, Tex.—to the Committee on Agriculture.

Also, a bill (H. R. 16879) making appropriation for the construction and equipment of a Weather Bureau observatory at Corpus Christi, Tex.—to the Committee on Agriculture.

By Mr. CARY: A bill (H. R. 16880) to license firemen, stokers, or water tenders—to the Committee on the District of Columbia.

By Mr. SULLOWAY: A bill (H. R. 16881) to increase the salaries of certain officials and employees in the Pension Bureau, Department of the Interior—to the Committee on Expenditures in the Interior Department.

By Mr. BINGHAM, from the Committee on Appropriations: A bill (H. R. 16882) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1909, and for other purposes—to the Union Calendar.

By Mr. PATTERSON: A bill (H. R. 16952) to amend an act entitled "An act to amend the act of Congress approved March 3, 1875, entitled 'An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes, and to further regulate the jurisdiction of circuit courts of the United States, and for other purposes' "—to the Committee on the Judiciary.

By Mr. PARSONS: A bill (H. R. 16953) to provide for the printing and publication of the rules and regulations of the Executive Departments and other branches of the Government—to the Committee on Printing.

By Mr. CRUMPACKER: A bill (H. R. 16954) to provide for the Thirteenth and subsequent decennial censuses—to the Committee on the Census.

By Mr. WATKINS: A bill (H. R. 16955) to extend the time for building a bridge across Red River at Shreveport, La.—to the Committee on Interstate and Foreign Commerce.

By Mr. LANDIS: A bill (H. R. 16956) to authorize the Hydro-Electric Company to construct a dam across White River near the village of Decker, in Knox County, Ind.—to the Committee on Interstate and Foreign Commerce.

By Mr. FRENCH: Joint resolution (H. J. Res. 135) providing for additional lands for Idaho under the provisions of the Carey Act—to the Committee on the Public Lands.

By Mr. PAYNE: A resolution (H. Res. 233) for the distribution of the special message of the President of January 31, 1908, to the various House committees—to the Committee on Ways and Means.

By Mr. POU: A resolution (H. Res. 234) authorizing the Speaker to appoint a select committee to investigate campaign contributions—to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. ACHESON: A bill (H. R. 16883) granting an increase of pension to Mary Melder—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16884) granting an increase of pension to Lizzie A. Young—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16885) granting an increase of pension to Sarah M. Dix—to the Committee on Invalid Pensions.

By Mr. ANDREWS: A bill (H. R. 16886) for the relief of Pedro Salazar y Garcia—to the Committee on War Claims

By Mr. ANDRUS: A bill (H. R. 16887) to correct the military record of James K. Fuller—to the Committee on Military Affairs.

Also, a bill (H. R. 16888) for the relief of Tennis W. Wade—to the Committee on Military Affairs.

By Mr. BRANTLEY: A bill (H. R. 16889) granting a pension to Augustus L. Brack—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16890) granting an increase of pension to John Dinneen, known as John J. Davidson—to the Committee on Invalid Pensions.

By Mr. BURLEIGH: A bill (H. R. 16891) granting an increase of pension to Laforest Groves—to the Committee on Invalid Pensions.

By Mr. CALDER: A bill (H. R. 16892) granting an increase of pension to Stephen B. Bartow—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16893) granting an increase of pension to Samuel S. Conklin—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16894) granting a pension to Fred W. Kinloch—to the Committee on Invalid Pensions.

By Mr. CAMPBELL: A bill (H. R. 16895) granting an increase of pension to Lawson D. Jernigan—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16896) granting an increase of pension to Harrison Lee—to the Committee on Invalid Pensions.

By Mr. CANNON: A bill (H. R. 16897) granting an increase of pension to George S. Burtner—to the Committee on Invalid Pensions.

By Mr. CARTER: A bill (H. R. 16898) granting an increase of pension to Albert Eggleston—to the Committee on Invalid Pensions.

By Mr. CARY: A bill (H. R. 16899) granting an increase of pension to John Rencher—to the Committee on Invalid Pensions.

By Mr. COLE: A bill (H. R. 16900) granting an increase of pension to Levi S. Raff—to the Committee on Invalid Pensions.

By Mr. CONNER: A bill (H. R. 16901) granting an increase of pension to George P. Hanson—to the Committee on Pensions.

Also, a bill (H. R. 16902) granting an increase of pension to William W. Olmsted—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16903) granting a pension to Abraham Fairman—to the Committee on Invalid Pensions.

By Mr. COX of Indiana: A bill (H. R. 16904) granting a pension to Seth S. Nye—to the Committee on Pensions.

Also, a bill (H. R. 16905) granting an increase of pension to Richard H. Timmonds—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16906) to correct the military record of William F. Songer—to the Committee on Military Affairs.

Also, a bill (H. R. 16907) for the relief of the estate of Larkin H. Penny, deceased—to the Committee on War Claims.

By Mr. CRAWFORD: A bill (H. R. 16908) granting a pension to J. H. Abel—to the Committee on Pensions.

By Mr. DAVEY of Louisiana: A bill (H. R. 16909) to refund certain taxes paid by the Southern Redistilling and Rectifying Company (Limited), of New Orleans, La.—to the Committee on Claims.

By Mr. DAWSON: A bill (H. R. 16910) to remove the charge of desertion against John C. Davis—to the Committee on Military Affairs.

By Mr. DENBY: A bill (H. R. 16911) granting an increase of pension to Clara B. Mercur—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16912) granting an increase of pension to Robert R. Marsh—to the Committee on Invalid Pensions.

By Mr. DWIGHT: A bill (H. R. 16913) granting a pension to George S. Loomis—to the Committee on Invalid Pensions.

By Mr. FLOYD: A bill (H. R. 16914) granting a pension to Thomas B. Hall—to the Committee on Invalid Pensions.

By Mr. FRENCH: A bill (H. R. 16915) granting a pension to Renville Rangers of Minnesota—to the Committee on Invalid Pensions.

By Mr. GARDNER of Massachusetts: A bill (H. R. 16916) for the relief of Benjamin C. Welch—to the Committee on Invalid Pensions.

By Mr. GREENE: A bill (H. R. 16917) granting an increase of pension to Edward McGinniss—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16918) granting a pension to William W. Smith—to the Committee on Invalid Pensions.

By Mr. HARDING: A bill (H. R. 16919) granting an increase of pension to Isaac Cox—to the Committee on Invalid Pensions.

By Mr. HEFLIN: A bill (H. R. 16920) granting a pension to John Waters—to the Committee on Pensions.

By Mr. HELM: A bill (H. R. 16921) granting an increase of pension to William Trusty—to the Committee on Invalid Pensions.

By Mr. HOUSTON: A bill (H. R. 16922) for the relief of the heirs of the estate of John McDermott—to the Committee on War Claims.

Also, a bill (H. R. 16923) granting an increase of pension to Levi N. Woodside—to the Committee on Invalid Pensions.

By Mr. KNOWLAND: A bill (H. R. 16924) for the relief of W. D. Farron—to the Committee on War Claims.

By Mr. LILLEY: A bill (H. R. 16925) granting an increase of pension to Andrew C. Barry—to the Committee on Invalid Pensions.

By Mr. McKINNEY: A bill (H. R. 16926) granting an increase of pension to Henry D. Hedrick—to the Committee on Invalid Pensions.

By Mr. MAYNARD: A bill (H. R. 16927) for the relief of Lieut. Commander Kenneth McAlpine—to the Committee on Naval Affairs.

By Mr. MOON of Tennessee: A bill (H. R. 16928) for the relief of the heirs of Christopher Wood, deceased—to the Committee on War Claims.

By Mr. MOORE of Pennsylvania: A bill (H. R. 16929) for the relief of the owners of the tug *Juno*—to the Committee on Claims.

By Mr. MOUSER: A bill (H. R. 16930) granting an increase of pension to Lewis Flick—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16931) granting an increase of pension to Sarah Garner—to the Committee on Invalid Pensions.

By Mr. PERKINS: A bill (H. R. 16932) granting a pension to David Farnham—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16933) granting a pension to Charles K. Davis—to the Committee on Invalid Pensions.

By Mr. REYNOLDS: A bill (H. R. 16934) granting an increase of pension to W. J. Heckman—to the Committee on Invalid Pensions.

By Mr. SHEPPARD: A bill (H. R. 16935) for the enrollment of Oliver Sills and his children, Lizzie and Perry Sills, as Mississippi Choctaws—to the Committee on Indian Affairs.

By Mr. SIMS: A bill (H. R. 16936) for the relief of the legal representatives of John S. Fielder, deceased—to the Committee on War Claims.

By Mr. SLEMP: A bill (H. R. 16937) to pay Isaac W. Airey for services rendered to the United States Army during the late civil war between the United States and the Confederate States as scout, and for expenses necessarily incurred and paid by him thereby—to the Committee on War Claims.

By Mr. SMITH of Michigan: A bill (H. R. 16938) granting an increase of pension to George W. Graves—to the Committee on Invalid Pensions.

By Mr. SOUTHWICK: A bill (H. R. 16939) for the relief of Daniel Leary—to the Committee on War Claims.

By Mr. WATKINS (by request): A bill (H. R. 16940) for the relief of Jacques de L. Lafitte—to the Committee on Claims.

By Mr. WHEELER: A bill (H. R. 16941) granting an increase of pension to John W. Campbell—to the Committee on Invalid Pensions.

By Mr. DIEKEMA: A bill (H. R. 16942) granting an increase of pension to John Wickham—to the Committee on Invalid Pensions.

By Mr. WILSON of Illinois: A bill (H. R. 16943) granting an increase of pension to Thomas J. O'Hara—to the Committee on Invalid Pensions.

By Mr. WILSON of Pennsylvania: A bill (H. R. 16944) granting an increase of pension to David O'Brien—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16945) granting an increase of pension to Eli Webb—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16946) granting an increase of pension to Silas T. Cleveland—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16947) granting an increase of pension to Joseph Snyder—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16948) granting an increase of pension to George W. Parker—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16949) granting an increase of pension to Stephen P. Chase—to the Committee on Invalid Pensions.

By Mr. WOODYARD: A bill (H. R. 16950) for the relief of John W. Trader—to the Committee on Military Affairs.

By Mr. FRENCH: A bill (H. R. 16951) granting a pension to James McMahon—to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, the following petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. ACHESON: Petition of New York State League, against amendment of immigration bill—to the Committee on Immigration and Naturalization.

Also, petition of General Assembly of the Presbyterian Church in United States of America, for the Littlefield original-package bill—to the Committee on the Judiciary.

By Mr. ALEXANDER of New York: Petition of Metal Polishers, Buffers, Platers, Brass Molders, Brass and Silver Workers' Union of North America, for construction of battle ships in navy-yards—to the Committee on Naval Affairs.

Also, petition of Musicians' Protective Association of Buffalo, N. Y., favoring H. R. 103—to the Committee on Labor.

By Mr. ANDREWS: Petition of Local Union No. 523 and Local Union No. 387, International Typographical Union, of Tarrytown and Mount Vernon, N. Y., for repeal of duty on white paper, etc.—to the Committee on Ways and Means.

By Mr. BATES: Petition of Abby B. Bates, for forest reservations in White Mountains and southern Appalachian Mountains—to the Committee on Agriculture.

By Mr. BONYNGE: Petition of Local Union No. 13, of the International Stereotypers and Electrotypers of North America, for abolition of duty on white paper and wood pulp—to the Committee on Ways and Means.

Also, petition of Detroit Federation of Labor, favoring H. R. 163, relative to commercial telegraphers—to the Committee on the Post-Office and Post-Roads.

By Mr. BRICK: Petition of W. T. Baker and others, of William Baker Post, No. 429, Grand Army of the Republic, of Mentone, Ind., for yearly allowance for soldiers with families in addition to regular pensions—to the Committee on Invalid Pensions.

By Mr. BURKE: Paper to accompany bill for relief of Amos M. Barbin—to the Committee on Military Affairs.

Also, petition of D. R. Reynolds, for the Kittridge copyright bill (S. 2900)—to the Committee on Patents.

Also, petition of Joseph R. Craig, against abolition of pension agencies—to the Committee on Invalid Pensions.

Also, petition of Harry Pabst, favoring the Kittridge copyright bill—to the Committee on Patents.

Also, petition of Charles D. Wettach, against legislation inimical to the paint industry—to the Committee on Interstate and Foreign Commerce.

Also, petition of George T. Barnsley, for H. R. 428, providing for a motor-vehicle bureau—to the Committee on the Judiciary.

Also, petition of E. V. Babcock Company, for national registration law for automobiles—to the Committee on Interstate and Foreign Commerce.

Also, petition of Glass Bottle Blowers' Association, against the Tillman bill (S. 2926)—to the Committee on the Judiciary.

Also, petition of officers of the Eighteenth Regiment, National Guard of Pennsylvania, favoring the graded pay bill, increasing pay of Army and Navy—to the Committee on Military Affairs.

Also, petition of Republican League of Clubs of New York State, against amendment of immigration laws—to the Committee on Immigration and Naturalization.

By Mr. BURLEIGH: Petition of Flint Wagon Works, of Flint, Mich., for a census of timber stumpage—to the Committee on Agriculture.

By Mr. BURNETT: Petition of National Funeral Directors' Association, against custom of burial at sea—to the Committee on the Merchant Marine and Fisheries.

By Mr. CAPRON: Petition of New England Drug Exchange, for amendment of Sherman antitrust law—to the Committee on the Judiciary.

Also, petition of McGregor Post, No. 14, Grand Army of the Republic, of Phenix, R. I., for the Sherwood pension bill, granting $1 per day for all soldiers serving eighteen months—to the Committee on Invalid Pensions.

Also, petition of Business Men's Association of Newport, R. I., for appropriation for defense of Narragansett Bay—to the Committee on Appropriations.

Also, petition of town council of Westerly, R. I., for the bill to increase efficiency of the Life-Saving Service—to the Committee on Interstate and Foreign Commerce.

By Mr. COUDREY: Papers to accompany bills for relief of Catherine Bausman and Thomas Carten—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of Helen Matthews—to the Committee on Pensions.

By Mr. DAWSON: Petition of National German-American Alliance for forest reservations in White Mountains and southern Appalachian Mountains—to the Committee on Agriculture.

Also, petition of National Funeral Directors' Association, against custom of burial at sea—to the Committee on the Merchant Marine and Fisheries.

Also, petition of 17 soldiers of the civil war, of Ottumwa, Iowa, for a change of pension laws ($20 per month, to apply at 65 years of age)—to the Committee on Invalid Pensions.

Also, petition of officers, directors, and trustees of art museums of the United States, for repeal of duty on works of art—to the Committee on Ways and Means.

By Mr. DUNWELL: Petition of Gigante Mountain Tunnel and Railway Company, for appropriation to deepen the channel of the Mississippi River—to the Committee on Rivers and Harbors.

Also, petition of American Antiboycott Association, against restricting rights of any court of equity in issuance of injunctions—to the Committee on the Judiciary.

Also, petition of Musical Mutual Protective Union, favoring H. R. 103 (Bartholdt bill, Government musicians versus civilian musicians)—to the Committee on Labor.

Also, petition of New York State League, against any amendment of immigration laws—to the Committee on Immigration and Naturalization.

By Mr. FLOYD: Papers to accompany bills for relief of Sarah L. Volz and Lafayette Cook—to the Committee on Invalid Pensions.

By Mr. FULLER: Petition of Carriage Builders' Association, for forest reservations in White Mountains and southern Appalachian Mountains—to the Committee on Agriculture.

Also, petition of A. D. Simon, of Ottawa, Ill., for copyright legislation beneficial to musical composers—to the Committee on Patents.

By Mr. GRANGER: Paper to accompany bill for relief of Edward McGinnis—to the Committee on Invalid Pensions.

By Mr. GRAHAM: Petition of Glass Bottle Blowers' Association, of United States and Canada, against the Tillman bill (S. 2926)—to the Committee on the Judiciary.

Also, petition of T. H. Nevin Company, against legislation inimical to the paint industry—to the Committee on Interstate and Foreign Commerce.

Also, petition of officers of Eighteenth Regiment, National Guard of Pennsylvania, for graded-pay bill, providing increase of pay for officers and enlisted men of the Army and Navy—to the Committee on Military Affairs.

Also, petition of Republican League of Clubs of New York State, against amendment of immigration laws—to the Committee on Immigration and Naturalization.

Also, petition of S. A. Mundy, of Bradford, Pa., favoring S. 82 (relative to claims of letter carriers)—to the Committee on Claims.

By Mr. GREEN: Paper to accompany bill for relief of William W. Smith—to the Committee on Invalid Pensions.

By Mr. HEFLIN: Papers to accompany bills for relief of John Waters and Catherine Nelson—to the Committee on Invalid Pensions.

By Mr. HOWELL of New Jersey: Petition of Plainfield Christian Endeavor Union, of Plainfield, N. J., favoring the McCumber bill (against liquor on Government property)—to the Committee on the Judiciary.

Also, petition of Musicians' Protective Union of New Brunswick, N. J., favoring H. R. 103 (Bartholdt bill)—to the Committee on Labor.

Also, petition of Board of Trade of Newark, N. J., for a tariff commission, as per S. 3163 (Beveridge bill)—to the Committee on Ways and Means.

By Mr. HOWELL of Utah: Petition of Woman's Atheneum of Park City, Utah, for forest reservations in White Mountains and southern Appalachian Mountains—to the Committee on Agriculture.

Also, petition of certain Government employees, for relief for services in excess of eight hours per day—to the Committee on Claims.

Also, petition of Council No. 81, United Commercial Travelers, against a parcels-post law—to the Committee on the Post-Office and Post-Roads.

By Mr. HUBBARD of Iowa: Petition of Sioux City Home Missionary Society, for the Littlefield original-package bill—to the Committee on the Judiciary.

Also, petition of M. E. De Wolf and others, against H. R. 13477 (parcels-post law)—to the Committee on the Post-Office and Post-Roads.

By Mr. HULL of Tennessee: Paper to accompany bill for relief of heirs of Albert G. Dunn—to the Committee on War Claims.

By Mr. KELIHER: Petition of National Funeral Directors' Association, against burial at sea—to the Committee on the Merchant Marine and Fisheries.

By Mr. LINDBERGH: Petition of James M. Russ and others, for pensions of $30 per month for soldiers and marines of the civil war—to the Committee on Invalid Pensions.

By Mr. LORIMER: Petition of Post 667, Grand Army of the Republic, Department of Illinois, of La Grange and Cook counties, for a volunteer officers' retired list—to the Committee on Military Affairs.

Also, petition of George H. Thomas Post, No. 5, Grand Army of the Republic, for H. R. 6288, for a volunteer officers' retired list—to the Committee on Military Affairs.

By Mr. MADISON: Petitions of citizens of Albert (Barton County) and Syracuse, Kans., for enactment of prohibition liquor law for the District of Columbia—to the Committee on the District of Columbia.

By Mr. MILLER: Petition of business men of Fourth Congressional District of Kansas, against a parcels-post law—to the Committee on the Post-Office and Post-Roads.

By Mr. NELSON: Petitions of Donald C. Scott and 5 others; George W. Burnell and others; Julias Schlaich and 9 others; Thomas L. Kennan and 14 others; Horace E. Mann and 21 others; and Frank H. Lull and 7 others, all volunteer officers of civil war, for a volunteer officers' retired list—to the Committee on Military Affairs.

By Mr. NYE: Petition of Minnesota Retail Hardware Association, for revision of the tariff on iron and steel, logs and lumber, etc.—to the Committee on Ways and Means.

Also, petition of Imperial Elevator Company, of Minneapolis, Minn., against H. R. 13477 (relative to furnishing list of names from post-offices)—to the Committee on the Post-Office and Post-Roads.

Also, petition of sundry citizens of Minneapolis, Minn., for bill to prohibit shipment of liquors into States with prohibition laws—to the Committee on the Judiciary.

By Mr. OLCOTT: Petition of North Side Board of Trade, for an annual appropriation bill for rivers and harbors—to the Committee on Rivers and Harbors.

Also, petition of mass meeting of the Poles of New York, against Polish exportation—to the Committee on Foreign Affairs.

By Mr. OVERSTREET: Petition of J. Cook, for the Littlefield bill—to the Committee on the Judiciary.

Also, petition of F. H. Watts, for alumni of Massachusetts Institute of Technology, for forest reservations in White Mountains and southern Appalachian Mountains—to the Committee on Agriculture.

Also, petition of Chester Bradford, for H. R. 286 (Currier bill), for increase of salaries in the Patent Office—to the Committee on Patents.

Also, petition of Indianapolis Musicians' Protective Association, for H. R. 103 (Bartholdt bill)—to the Committee on Labor.

Also, petition of Indiana Automobile Company, for Federal registration of automobiles—to the Committee on Interstate and Foreign Commerce.

Also, petition of Richmond City Waterworks, for forest reservation in White Mountains and southern Appalachian Mountains—to the Committee on Agriculture.

By Mr. PADGETT: Paper to accompany bill for relief of heirs of Moab S. Smith—to the Committee on War Claims.

By Mr. PRINCE: Petition of John Wood Post, Grand Army of the Republic, for a volunteer officers' retired list—to the Committee on Military Affairs.

By Mr. PUJO: Paper to accompany bill for relief of Randle Horman—to the Committee on Claims.

Also, petition of board of directors of National Manufacturers' Association, for currency legislation—to the Committee on Banking and Currency.

By Mr. TOWNSEND: Petition of Beers Post, No. 140, Tecumseh, Mich., for the Sherwood pension bill (H. R. 7625)—to the Committee on Invalid Pensions.

Also, petition of citizens of Adrian and Blissfield, Mich., for restoration of motto "In God we trust"—to the Committee on Coinage, Weights, and Measures.

Also, petition of Michigan Association of Free Will Baptists, for the Littlefield original-package bill—to the Committee on the Judiciary.

By Mr. SABATH: Petition of National Supreme Lodge of Jednoty Táboritu and National Supreme Lodge, C. S. P. S., both of St. Louis, Mo., against the Littlefield original-package bill—to the Committee on the Judiciary.

By Mr. SLEMP: Paper to accompany bill for relief of Isaac W. Airey—to the Committee on Claims.

By Mr. SMITH of Michigan: Petition of George D. Burden and 49 other members of Veteran Lodge, Independent Order of Good Templars, of Michigan Soldiers' Home, for prohibition law in the District of Columbia and Territories—to the Committee on the District of Columbia.

Also, petition of H. Wilson Burgan, of Maryland, for the Sims prohibition bill (H. R. 9086)—to the Committee on the District of Columbia.

By Mr. SULZER: Petition of American Institute of Electrical Engineers, for forest reservations in White Mountains and southern Appalachian Mountains—to the Committee on Agriculture.

Also, petition of Local Union No. 6, International Typographical Union of North America, for repeal of duty on white paper, pulp, etc.—to the Committee on Ways and Means.

Also, petition of Blenker Veteran Association, Eighth Regiment, New York, for the Sherwood pension bill—to the Committee on Invalid Pensions.

Also, petition of New York Society Library, for S. 2900 and H. R. 11794, relative to copies of imported books free of duty—to the Committee on Ways and Means.

Also, petition of R. J. Anderson and others, for a minimum salary of $3 per day and twenty-six days' vacation with pay for storekeepers and gaugers—to the Committee on Ways and Means.

Also, petition of M. A. Reise, for paragraph E of the copyright bill—to the Committee on Patents.

SENATE.

WEDNESDAY, *February 12, 1908.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. LODGE, and by unanimous consent, the further reading was dispensed with.

The VICE-PRESIDENT. The Journal stands approved.

LIST OF VESSELS.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Navy, transmitting, pursuant to law, a list of the names of certain vessels which will require general overhauling to the extent of $200,000 or more during the fiscal year ending June 30, 1909, which, with the accompanying papers, was referred to the Committee on Naval Affairs and ordered to be printed.

FINDINGS OF THE COURT OF CLAIMS.

The VICE-PRESIDENT laid before the Senate communications from the assistant clerk of the Court of Claims, transmitting certified copies of the findings of fact filed by the court in the following causes:

In the cause of D. W. Dorris *v.* United States; and

In the cause of Richard H. Turner, in his own right and as administrator of the estate of Eliza Turner, deceased, and Eliza Ann Turner *v.* United States.

The foregoing findings were, with the accompanying papers, referred to the Committee on Claims and ordered to be printed.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a petition of the Chamber of Commerce of New York City, N. Y., praying that an appropriation be made for the purchase of lands and buildings for the consular establishments in China, Japan, and Korea, which was referred to the Committee on Foreign Relations.

Mr. PLATT presented a petition of the Young Woman's Christian Temperance Union of Schenectady, N. Y., praying for the adoption of an amendment to the Constitution to prohibit the disfranchisement of citizens on account of sex, which was referred to the Select Committee on Woman Suffrage.

He also presented memorials of sundry citizens of Albany, Buffalo, Gloversville, Little Falls, New York City, Syracuse, and Tompkinsville, all in the State of New York, remonstrating against the adoption of a certain amendment to the present copyright law relating to photographic reproductions, which were referred to the Committee on Patents.

He also presented petitions of sundry citizens of Norfolk and Portsmouth, in the State of Virginia, praying for the enactment of legislation providing for the construction of all battle ships in the Government navy-yards, which were referred to the Committee on Naval Affairs.

He also presented a memorial of James C. Rice Post, No. 29, Department of New York, Grand Army of the Republic, of New York City, N. Y., remonstrating against the enactment of legislation to abolish certain pension agencies in the United States, which was referred to the Committee on Pensions.

He also presented a petition of the International Reform Bureau of Washington, D. C., praying for the enactment of legislation to regulate the sale and importation of opium in the Philippine Islands, which was referred to the Committee on Finance.

He also presented a memorial of the National Board of Trade of Washington, D. C., remonstrating against the enactment of legislation providing for a discrimination against the immigration of Chinese and Japanese, which was referred to the Committee on Immigration.

Mr. CLARK of Wyoming presented the petition of John H. Ruff, of Wyoming, praying for the enactment of legislation for the relief of Joseph V. Cunningham and other officers of the Philippine Volunteers, which was referred to the Committee on Claims.

Mr. ANKENY presented a petition of the Chamber of Commerce of Olympia, Wash., praying that an appropriation be made for the construction of a public building in that city, which was referred to the Committee on Public Buildings and Grounds.

Mr. WARNER presented memorials of sundry organizations of St. Joseph and St. Louis, in the State of Missouri, remonstrating against the enactment of legislation to regulate the interstate transportation of intoxicating liquors, which were referred to the Committee on the Judiciary.

He also presented a petition of the National Funeral Directors' Association of Norfolk, Va., praying for the enactment of